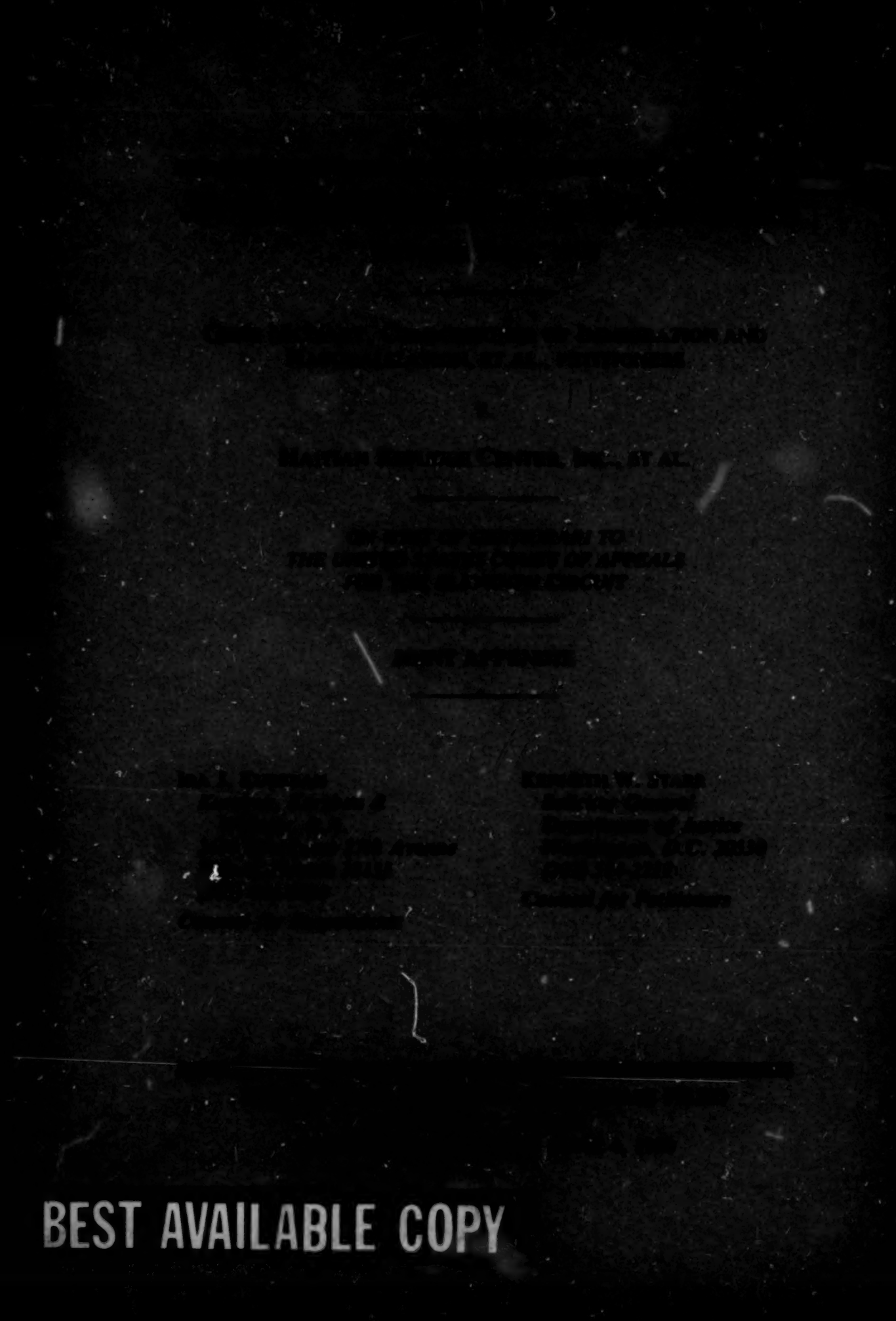

BEST AVAILABLE COPY

In the Supreme Court of the United States

OCTOBER TERM, 1990

GENE MCNARY, COMMISSIONER OF IMMIGRATION AND NATURALIZATION, ET AL., PETITIONERS

v.

HAITIAN REFUGEE CENTER, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

JOINT APPENDIX

TABLE OF CONTENTS*

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* The following materials have been reproduced in the appendix to the petition for a writ of certiorari and are not reproduced in this joint appendix:

Contents – Continued

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 88-1066-Civ-ATKINS

HAITIAN REFUGEE CENTER, INC., et al.

vs.

ALAN C. NELSON, Commissioner of Immigration and Naturalization Service, et al.

DOCKET ENTRIES

DATE	NR	PROCEEDINGS
1988		
JUN 13	1	COMPLT for declaratory relief, injunctive relief & relief in the Nature of Mandamus w/exhibits (orig.). cf
13	2	MOTION for preliminary injunction, by pltfs. cf
13	–	MEMORANDUM in supp of declaratory relief, injunctive relief & relief in the nature of Mandamus, by plfts. cf
13	4	MOTION for permission to submit memo in excess of pg limitation, by pltfs. cf
14	5	CERTIFICATE of serv, by pltf. cf
16	6	MEMORANDUM in supp of declaratory relief, injunctive relief & relief in the nature of Mandamus, By pltfs. cf

DATE	NR	PROCEEDINGS
16	7	ORDER (SM 6/16/88) GRANTING mot for permission to submit memo in excess of pg limitation, (EOD 6/20/88 CCAP). cf
20	8	NOTICE setting hrg on pltf's mot for preliminary injunction on 7/6/88 @ 8:30 a.m. cf
24	9	MOTION for ext of time for filing brief, by deft Nelson. cf
27	10	ORDER (CCA 6/27/88) GRANTING mot for ext of time for filing deft's Nelson's brief; Deft have by 6/29/88; Pltf has until 7/1/88 w/n which to file any reply, (EOD 6/29/88 CCAP). cf
27	11	ORDER (CCA 6/27/88) REQUIRING proffer of evidence; Pltf is ordered to file proffer by 6/30/88 @ 4:00 p.m.; Deft is ordered to serve resp by 7/5/88 @ 4:00 p.m., (EOD 6/29/88 CCAP). cf
28	12	ORDER (CCA 6/28/88) Pltfs shall file reply by 5:00 p.m. 7/1/88 to defts' resp. (EOD 7/5/88 CCAP). cf
27	13	MOTION for ext of time for filing reply to defts' resp. by pltfs. cf
29	14	OPPOSITION to mot for preliminary injunction, by defts. cf
29	15	MOTION for leave to exceed pg limitation, by defts. cf
29	–	OPPOSITION to mot for preliminary injunction, by defts. (copy) cf
30	16	NOTICE of compliance, by pltfs. cf

DATE	NR	PROCEEDINGS
Jul 1	17	EMERGENCY mot for change of preliminary injunction hrg date, by pltfs. cf
1	18	MOTION for leave to exceed pg limitation, by pltfs. cf
1	–	REPLY memo in supp of mot for a preliminary injunction, by pltfs. cf
1	19	ORDER (CCA 6/30/88) GRANTING mot to exceed pg limitation, (EOD 7/7/88 CCAP). cf
7	20	REPLY memo in supp of mot for a preliminary injunction, by pltfs. cf
1	21	NOTICE of appearance, by counsels for defts. cf
1	–	LETTER to Clerk re: 4 pgs of brief to Ct., by defts. cf
5	22	MOTION to certify the class, by pltfs. cf
5	23	MEMORANDUM in supp of mot to certify the class, by pltfs. cf
5	24	ORDER (CCA 7/5/88) GRANTING pltfs' mot; Clerk shall accept filing of pltfs' reply memo in supp of mot for a preliminary injunction, (EOD 7/7/88 CCAP). cf
1	25	OPPOSITION to mot to certify class, by pltfs. cf
15	26	NOTICE of deps of Marie Gizele Angrand & Marie Raquel Viera on 7/26/88 @ 9:00 a.m., Jeanette Vixama & Germaine Cadet @ 11:00 a.m.; & Hector Trejo Tamayo Vega @ 3:00 p.m.; Novamise Julien & Francklin Joseph @ 9:00 a.m.; Joseph Saintil Dieudone & Rosita Delva

DATE	NR	PROCEEDINGS
		@ 11:00 a.m. & Marie Philomene Servilien & Recol Neus @ 3:00 p.m. on 7/27/88; Gerard Henry, Rose Pierrecina Lebon Pierre @ 9:00 a.m.; Marie France Jean Philippe & Sylvia Lindor @ 11:00 a.m. & Dieumercie Desir @ 3:00 p.m. on 7/28/88. cf
21	27	PROPOSED findings of fact & conclusions Of law, by pltfs. cf
21	28	BRIEF in supp of proposed findings of fact & conclusions of law, by pltfs. cf
22	29	AMENDED notice of deps, by defts (See list for details). cf
22	30	PROPOSED findings of fact & conclusions of law, by defts. cf
22	31	MEMORANDUM in supp of proposed findings of fact & conclusions of law, by defts. cf
25	32	SECOND amended notice of deps, by defts (see list for details). cf
25	33	NOTICE Of filing substituted memo, by pltfs. cf
25	34	BRIEF in supp of proposed findings of fact & conclusions of law, by pltfs. cf
28	35	SUBSTITUTE proposed findings of fact & conclusions of law, by defts. cf
AUG 1	36	SUMMONS iss'd as to defts #1, 3, 4. hr
2	37	NOTICE of clarification in opp to mot class cert & prop findings. hr
2	38	NOTICE of app for pltfs of M.T. Kelleher, FL Rural Legal Svcs, Inc. hr

DATE	NR	PROCEEDINGS
3	39	SUMMONS iss'd Perry Rivkind. hr
4	40	ALIAS summons' iss'd defts #1, 2, 3, 4, 6, 7, 8. hr
5	41	SUMMONS' iss'd Dept. of Justice & Dept. INS. hr
10	42	MOTION to compel, by pltfs. cf
15	43	AFFIDAVIT of service of Michael Guare. cf
15	44	AFFIDAVIT of serv exec 8/10/88 as to Dept of Justice c/o US Attys Asst. Patricia Kenny. cf
22	45	CERTIFIED statement of counsel, by defts. cf
22	46	OPPOSITION to pltfs' mot to compel, by defts. cf
22	47	MOTION to compel, by defts. cf
22	48	MEMORANDUM of points & auth in supp of mot to compel, by defts. cf
22	49	ORDER (CCA 8/22/88) GRANTING pltfs' mot for preliminary injunction & certifying class, (EOD 8/26/88 CCAP). cf
22	50	ORDER (CCA 8/22/88) GRANTING pltfs' mot for preliminary injunction, (EOD 8/26/88 CCAP). cf
25	51	ORDER (CCA) for p/t conf & notice of jury trial; P/T conf on 10/7/88 @ 8:30 a.m.; Trial is scheduled on two wk trial cal beginning 10/17/88: Cal call on 10/13/88 @ 1:45 p.m. cf
Sep 6	52	MOTION for protective order, by pltfs. cf
6	53	RESPONSE to defts' mot to compel, by pltfs. cf

DATE	NR	PROCEEDINGS
7	54	MOTION for stay pending decision to appeal/pending appeal, by defts. cf
8	55	MOTION to compel, by pltfs. cf
19	56	*NOTICE OF APPEAL* from Order entering a preliminary inj on 9/22/88. (Copies to USCA & Attys of Record) (interlocutory). (No fee required). ea
* 16	57	OPPOSITION to defts' mot for stay pending decision to appeal, by pltfs. cf
21	58	EMERGENCY mot to stay proceedings, by defts. cf
23	59	OPPOSITION to defts' emergency mot to stay proceedings, by pltfs w/ exhibs. cf
27	60	OPPOSITION to mot to compel, by defts. cf
28	61	ORDER (CCA 9/27/88) DENYING defts' mot for a stay pending appeal, (EOD 9/29/88 CCAP). cf
28	62	REPLY to pltfs' opp to defts' emergency mot to stay proceedings, by defts; (copy). cf
30	63	NOTICE Of filing original affidavit Of William J. Chambers, by defts. cf
30	64	DECLARATION of William J. Chambers. cf
* 22	—	USCA ack receipt of First Notice of appeal, (88-5934). cf
Oct 3	65	REPLY to pltfs' opp to defts' emergency mot to stay proceedings, by defts. cf

DATE	NR	PROCEEDINGS
5	66	ORDER (CCA 10/5/88) GRANTING defts' mot to stay proceedings to the extent that action has been removed from trial cal & cont until time to be determined by Ct., & DENYING defts' mot to compel discovery & GRANTING pltfs' mot to compel discovery, (EOD 10/7/88 CCAP). cf
6	67	ORDER (USCA) GRANTING Deft's M/stay pending appeal. Paragraphs 6, 7 & 8 of USDC's preliminary inj of 8/22/88 are stayed pending further order of this court. (EOD 10/7/88-CCAP). dd
11	—	*DESIGNATED RECORD ON APPEAL* transm to USCA, (2) vol pldgs, (1) vol exh, (88-5934). dd
11	68	*ANSWER* to complt, by defts. cf
19	69	TRANSCRIPT of testimony of Michael Seward proceedings on 7/7/88 pgs 1-25. li
19	70	TRANSCRIPT of excerpt of proceedings on 7/7/88 pgs 2-8. li
19	71	TRANSCRIPT of excerpt of proceedings on 7/8/88 pgs 9-50. li
19	72	TRANSCRIPT of excerpt of proceedings on 7/11/88 pgs 1-152. li
18	73	PROPOSED PROTECTIVE ORDER (CCA 10/17/88) (EOD 10/19/88 CCAP), (See order for further details). cf

DATE	NR	PROCEEDINGS
21	–	*1st SUPPLEMENTAL ROA* transm to USCA, (4) vol transc, (88-5934). ddg
27	74	TRANSCRIPT of hrg dated 7/6/88. Pgs. 1-84. vp
27	75	TRANSCRIPT of hrg dated 7/7/88. Pgs. 1-188. vp
27	76	TRANSCRIPT of hrg dated 7/8/88. Pgs. 1-57. vp
27	77	TRANSCRIPT of hrg dated 7/8/88. Pgs. 1-115. vp
27	78	TRANSCRIPT of hrg dated 7/11/88. Pgs. 1-54. vp
27	–	*SECOND SUPPLEMENTAL ROA* transm to USCA consisting of 5 vol. transc. (88-5934). vp
28	–	USCA ack receipt of ROA consisting of 2 vols pldgs & 1 vol exhibits, (88-5934). cf
Nov 4	–	USCA ack receipt of Supp certified ROA consisting of 4 vols transcripts, (88-5896). cf
7	–	USCA ack receipt of 2nd supp ROA, (88-5934). cf
15	79	MOTION for stay pending petn for writ of Mandamus, by defts. cf
15	80	MEMORANDUM of points & auth in supp of mot for stay pending petn for writ of mandamus, by defts. cf
22	81	ORDER (CCA 11/22/88) DENYING defts' mot to stay, (EOD 11/25/88 CCAP). cf

DATE	NR	PROCEEDINGS
Dec. 6	–	*EXHIBITS* transm. to USCA, consisting of 1 acc. folder. (88-5934). njf
15	–	USCA ack receipt of ROA consisting of 1 acc folder of exhibits only, (88-5934). cf
1989		
May 12	82	MANDATE (USCA 5/3/89) DENYING petn for writ of mandamus, (EOD 5/17/89) (88-6135). cf
Jun 14	83	ORDER (CCA 6/13/89) that pltfs file status report w/n 10 days, (EOD 6/15/89 CCAP). cf
23	84	STATUS report, by pltfs. cf
Jul 11	85	VERIFIED bill of costs, by Ira J. Kurzban. cf
11	86	AFFIDAVIT of Ira J. Kurzban. 1985 & 86 same binder. cf
11	87	APPLICATION for costs, fees & other expenses under Equal Access to Justice Act & memo in supp, by pltfs. cf
24	88	NOTICE of filing aff of expert, by pltfs. cf
24	89	AFFIDAVIT of Bruce Rogow. cf
28	90	MOTION to stay consideration of pltfs' application for costs, fees & other expenses under Equal Access to Justice Act, by defts. cf
Aug 3	91	RESPONSE to defts' mot to stay consid of pltfs' appl for costs, fees & other expensed under Equal Access to Justice Act., by pltfs. cf

DATE	NR	PROCEEDINGS
11	92	REPLY memo in supp of defts' mot to stay consid of pltfs' applic for costs, fees & other expenses under Equal Acces to Justice Act, by pltfs. cf
16	93	NOTICE of filing re slip opinion Ayuda Inc. v. Thornburgh, by defts. cf
Sept. 6	94	ORDER (CCA 9/6/89) REFERRING cause to US Mag William C. Turnoff ofr R&R on defts' mot to stay consid of pltfs' appl for costs, fees & other expenses, (EOD 9/14/89 CCAP). cf
Oct 18	95	ORDER (WCT 10/16/89) DENYING defts' mot to stay consid of pltfs' appl for costs, fees & other expenses under the Equal Access to Justice Act., (EOD 10/19/89 CCAP). cf
Nov 13	96	MANDATE OF USCA (11/7/89) AFFIRMING jdmt of Dist Ct. & defts/appellants pay pltfs/appellees costs an appeal, (EOD 11/16/89 CCAP) (88-5934) ROA ret'd consisting of 2 accordian of exh & 2 vols ROA, 4 vols supp ROA & 5 vols 2nd supp ROA. cf
15	97	MOTION for ext of time, by defts. cf
20	98	MOTION to exceed page limitation, by defts. cf
20	--	MEMORANDUM of points & auth in opp to pltfs' appl for costs, fees, & expenses under Equal Access to Justice Act, by defts. cf
22	99	ORDER (WCT 11/18/89) GRANTING defts' mot for ext of time, (EOD 11/27/89 CCAP). cf

DATE	NR	PROCEEDINGS
24	100	ORDER (CCA 11/24/89) GRANTING mot to exceed page limitation, (EOD 11/28/89 CCAP). cf
30	101	MOTION for ext of time, by pltfs. cf
* 24	102	MEMORANDUM of points & auth in opp to pltfs' appl for costs, fees, & expenses under Equal Access to Justice Act, by deft. cf
Dec 7	103	ORDER (CCA 12/7/89) REFERRING to US Mag William C. Turnoff for R&R on pltfs' appl for costs, fees & expenses, (EOD 12/12/89 CCAP). cf
11	104	ORDER (WCT 12/8/89) GRANTING mot for ext of time; Pltfs shall have to 12/18/89 in which to file their resp, (EOD 12/14/89 CCAP). cf
18	105	MOTION for ext of time to file reply, by pltfs. cf
26	106	MOTION for ext of time to file reply, by pltfs. cf
28	107	ORDER (WCT 12/27/89) GRANTING pltf's mot for ext of time; Pltfs' have to 12/29/89 to file reply, (EOD 12/29/89 CCAP). cf
1990		
Jan 4	108	MOTION to file memo in excess of 20 pages, by pltfs. cf
9	109	REPLY to defts' memo of points & authorities in opp to pltfs' appl for costs, fees, & expenses under Equal Access to Justice Act, by pltfs. cf

DATE	NR	PROCEEDINGS
25	110	SUPPLEMENT to defts' memo of points & auth in opp to pltfs' appl for costs, fees & expenses under the Equal Access to Justice Act, by defts. cf
31	111	ORDER (WCT 1/30/90) GRANTING pltfs' mot to file memo in excess of 20 pgs., (EOD 2/1/90 CCAP). cf
Feb 29	112	ORDER (WCT–2/28/90) pltfs file resp to defts' suppl to defts' memo in opp to pltfs' application for costs by 3/19/90 (EOD–3/7/90–CCAP). vf
Mar 9	113	RESPONSE purs court ord of 2/28/90, by pltfs. vf
22	114	REPLY to resp purs to Court Order of 2/28/90, by defts. dm
May 2	115	R&R (WCT 4/30/90) recomm that Pltfs' applic for costs & fees under the EAJA be HELD IN ABEY-ANCE pending disposition of defts' petn for Writ of Certiorari in the US Supreme Court. Ptys file obj w/in 10 days. (EOD 5/3/90–CCAP). dm
Jun 18	116	SUPPLEMENT to resp purs to Court Order of 2/28/90, by Pltfs. dm
20	117	ORDER (CCA 6/19/90) ADOPTING R&R of Mag & Pltfs' applic for costs & fees be HELD in ABEYANCE pending disposition of Defts' petn for Writ of Certiorari in US Supreme Court. (EOD 6/25/90–CCAP). dm

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

No. 88-5934

HAITIAN REFUGEE CENTER, INC., et al.

v.

ALAN C. NELSON, Commissioner of Immigration and Naturalization Service, et al.

DOCKET ENTRIES

TITLE. HAITIAN REFUGEE v. NELSON

NO 88-5934

EXPEDITED

1. RECORD, EXHIBITS AND BRIEF INFORMATION

Filed		Due
09-29-88	Appeal Information Sheet	
	Court Reporter Acknowledgment	10-09-88
	Transcript	
	Record on Appeal	
	Partial Record or Cert List	
10-20-88	Record on Appeal - No of Vols 2	
10-26-88	Supp Record - No of Vols 4T	
11-01-88	Second Supp Record - No of Vols 5T	
10-20-38	Exhibits 1X ☐ Env ☐ Box ☐ Pkg ☐ Roll	
12/9/88	Exhibits 1 ☐ GC ☐ Box ☐ Pkg ☐ Roll	
	Briefing Notice Issd	10-7-88
10-17-88	Brief for Appellant CEd PT	10-17-88
	Brief for Appellant M10-20	
10-17-88	Rec'd Excerpts CEd	10-17-88
11/10/88	Brief for Appellee d10/9 CE'd	
	Brief for Appellee	11-09-88
	Brief for Cr Appellee	
11/22/88	Reply Brief for Appellant 11/18 (CE'd)	11-17-88
	Supp Brief for Appellant	
	Supp Brief for Appellee	
11/17/88	Brief for Amicus (CE'd)	
	Intervenor	
	Supp Authority	
	Supp Authority	

2. AGENCY REVIEW CASES

- Petition for Review of Order of ☐ NLRB ☐ FPC ☐
- Application for Enforcement — NLRB
- Answer to Application for Enforcement
- Cross Application for Enforcement
- Summary Entry of Judgment
- Appl for Entry of Supp Judgment

3. MISCELLANEOUS FILINGS

09-22-88 Dup Notice of Appeal and D C Docket Entries

- Papers Trans from Misc No
- Order of DC Granting Appeal IFP
- Order of DC Appointing Counsel
- Affidavit of Financial Status
- CJA 20 Issd Voucher Recd
- CJA 21 for Transcript

09-30-88 Sent to Juris. Screening.

4. EXTENSION Flg. Motion for:

	Order Fld.	Ext. to:
Appeal Information Sheet		
Record Trans		
Record Trans		
Appellant's Brief		
Appellant's Brief		
Appellant's Brief		
Appellee's Brief		
Appellee's Brief		
Appellee's Brief		
Reply Brief		

5. CALENDAR INFORMATION

Non Argument Panel

11/21/88 Case Assigned for 12/14/88 Atl ☐ Mont ☐ Cas ☐ Mia ☐

Case Cont'd for Reassignment

Case Reassigned for ☐ Atl ☐ Mont ☐ ☐ Mia ☐

Hearing Panel PHR/RSV/KAUFMAN

12/14/88 Case Argued XX by Appellant XX by Appellee

Case Sub w/o Arg ☐ by Appellant ☐ by Appellee

Arguing Judge

6. OPINION INFORMATION XXX Pub NonPub

5/23/89 Opinion Rendered

RSV Affirmed

Reversed

Affd in Pt P C Conc Spec

Vacated XXX Signed Dis

Dismissed Rule 36-1 Dis in Pt

Opinion Withdrawn

7. REHEARING INFORMATION

05-31-89 Mot for Ext Ext to 7-12-89 NFE (DJM)

Mot for Ext Ext to

ES Mot for Ext Ext to

07-12-89 Petition for Rehearing (j)

☒ Appellant ☐ Appellee ☐ Reg ☒ Time

Petition for Rehearing

☐ Appellant ☐ Appellee ☐ Reg ☐ Time

ES Response of

10-10-89 Order Denying Rehearing

Dissenting

☐ Opinion §9

☐ Order on Petition for Rehearing §9

14

NO. 88-5934

15

8. MOTIONS

Filing Motion to or for:	Response Filed By	Date	Granted	Denied	By Court	By Clerk	Date
Mandamus							
Reinstate Appeal							
Stay Further Proceedings in CA							
09-23-88 Stay Pending Appeal Aplt			XX			SeeS9	10-05-88
Injunction Pending Appeal							
Consolidate Appeals W. No.							
Leave to Appeal IFP							
Bail Pending Appeal							
Withdraw as Counsel							
Appointment of Counsel							
Leave to File Supp. Record							
Leave to File Brief in Excess Pgs							
Dismiss by Appellant							
Dismiss by Appellee							
Amicus Curiae							
Leave to File Supp. Brief							
10-17-89 Stay of Mandate See S-9	Aples'	10-30-89					
Recall Mandate							
Expedite Appeal							
Remand							
Limited Remand							

9. OTHER DOCKET ENTRIES

10-05-88	Flg. Order: aplt's motion for stay pending appeal is GRANTED. Para. (6), (7), and (8) of the DC's preliminary injunction of Aug. 22, 1988, are stayed pending further order of this Court. This appeal is expedited. (RJT/JLE/ERC) ag
11/10/88	Flg. motion of American Immigration Lawyers Association for leave to file an amicus brief.(Sub. PHR 11/15/88)jwp
11/17/88	Flg. order GRANTING motion of American Immigration Lawyers Association for leave to file an amicus brief.(PHR) jwp
07-25-89	Flg. Mot. of aplts. for leave to file supplemental authority./raw
07-26-89	Flg. Order - Aplt's Mot. for leave to file supplemental authority is GRANTED. RSV./raw
10-17-89	Flg. Aplts' Mot. to stay mandate and to continue preliminary injunction.
11-02-89	Flg. Order - Aplts' Mot. to stay mandate for 30 days and to continue the 10-05-88 stay of paragraphs (6)(7) and (8) of the DC's 8-22-88 preliminary injunction order pdg application to the Supreme Court for a writ of certiorari is DENIED. RSV./raw

10. JUDGMENT OR MANDATE INFORMATION

	Bill of Costs
	Obj. to Bill of Costs
5/23/89	Flg. & Entg. Judgment
	Issg. Copy of Jdgt. to Bd & Cnsl
11-07-89	Jdgt. as Mat. Issd. to Clerk
	Jdgt. as Mat. Reissd. to Clerk
11-07-89	Dismissal Issd. to Clerk
11-07-89	Record on Appeal Retd. to Clerk
	Exhibits Retd. to Clerk
	Mandate Stayed to

total 11 volumes
2 acc. folders

11. SUPREME COURT INFORMATION 89-1332

	Pet. for Writ Docketed in Sup. Ct.
	Brief(s) of Pet. and Resp. Filed in Sup. Ct.
	Transmitted Orig. Exhibits to S.C.
	Order of S.C. – Ext. to
2/26/90	Notice of Flg. of Cert. Pet. in
	Order of S.C. ☐ Denied ☐ Granted
	Notice of Denial of Pet. for Rehearing
	Opinion of S.C. dated
	Judgment of S.C.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 88-1066-Civ-ATKINS

HAITIAN REFUGEE CENTER, INC., et al.

vs.

ALAN C. NELSON, Commissioner of Immigration and Naturalization Service, et al.

COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF AND RELIEF IN THE NATURE OF MANDAMUS

(Class Action)

The Plaintiffs, HAITIAN REFUGEE CENTER, INC., et al., sue the Defendants, PERRY RIVKIND, et al., and allege as follows:

I. PRELIMINARY STATEMENT

1. This is a class action seeking declaratory, mandatory and injunctive relief for Plaintiffs and a class of persons who have applied for, or will in the future apply for, Temporary Lawful Residence status as Special

Agricultural Workers ("SAW") under Section 210 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.* as amended by the Immigration Reform and Control Act ("IRCA"), Pub. L. 99-603, 100 Stat. 3359 (November 6, 1986), and who have been or will be denied such status by the Immigration and Naturalization Service ("INS") because of the Defendants' unlawful practices.

This action challenges the practices, policies and procedures of the INS for determining Lawful Temporary Resident status under the SAW program. The Plaintiffs have been deprived of their rights under IRCA in the application of an improper burden of proof to be applied in determining SAW applications, in the procedure for interviewing SAW applicants and determining their applications, and in the procedure for appealing denials of their claims. This suit also challenges the failure of the INS to promulgate regulations to insure that the applicants are able to secure employment records to establish their claims, when such evidence exists.

2. Under the SAW provisions of IRCA, the Attorney General *must* grant temporary lawful resident status to any alien who applies for such status within the statutorily set time period, is admissible to the United States as an immigrant, and can establish that s/he:

a) resided in the United States; and

b) performed at least 90 man-days of seasonal agricultural services in the United States during the twelve month period ending on May 1, 1986.

8 U.S.C. § 1160(a)(1).

3. Under IRCA, the SAW applicant has the initial burden of proving by a preponderance of the evidence that s/he has worked the required 90 man-days of farm labor.

8 U.S.C. § 1160(b)(3)(B)(i). A SAW applicant "can meet such burden of proof . . . by providing sufficient evidence of that employment as a matter of just and reasonable inference. In such a case, the burden then shifts to the Attorney General to disprove the alien's evidence with a showing which negates the reasonableness of the inference to be drawn from the evidence." 8 U.S.C. § 1160(b)(3)(B)(iii). No specific kind of proof is required of SAW applicants and Congress, recognizing that standard employment records often do not exist or would be extremely difficult for many farmworkers to obtain, made applicable to SAW applications the lenient standards of proof developed in the Fair Labor Standards Act ("FLSA") caselaw, which provides that uncorroborated testimony alone creates a just and reasonable inference and shifts the burden of disproving that inference to the other party. *See* H.R. CONF. REP. No. 1000, 99th Cong., 2d Sess. No. 97, *reprinted in* 1986 U.S. CODE CONG., & ADMIN. NEWS 5840, 5853. Similarly, Defendants' own regulations provide that proof other than standard employer records, including affidavits from crewleaders and co-workers, may be submitted. 8 C.F.R. § 210.3(c)(3).

4. The most serious of Defendants' violations of the law complained of in this case is that, despite the clear language of IRCA, the clear intent of Congress, and the provisions of their own regulations, Defendants have imposed an impossible burden of proof on SAW applicants and are requiring applications to be substantiated with payroll records, pay stubs or other nonexistent documentary evidence.

5. In order to insure that a SAW applicant is able to remain in the United States at least long enough for the

decision on his/her application to be made, IRCA provides that any alien who submits a "nonfrivolous" application for temporary lawful resident status has the right to work authorization and a stay of deportation or exclusion until the final determination on the application has been made. 8 U.S.C. § 1160(d)(2). Defendants' regulations also provide that applicants who submit "nonfrivolous" applications shall be allowed to travel abroad. 8 C.F.R. § 210.4(b)(2). Congress defined a "nonfrivolous" application as one in which the applicant: (1) attests that s/he has worked the requisite number of man-days; (2) identifies the type or nature of the proof s/he intends to produce to prove his/her claim; (3) acknowledges the penalties for fraud; and (4) identifies his/her current or immediate past employer. H.R. CONF. REP. No. 1000, 99th Cong., 2d Sess. 97, *reprinted in* 1986 U.S. CODE CONG. & ADMIN. NEWS 5840, 5842. Congress also made clear their "inten[t] that INS not go beyond these criteria in seeking to determine whether an alien has made a "nonfrivolous" case for eligibility [because doing so] may undermine the purposes of this section, ie., to encourage undocumented workers to come forward and seek to obtain legal status." *Id.*

6. Every SAW applicant must submit an application to an INS Legalization Office (LO) within the statutorily-prescribed period, must submit some evidence supporting his/her claim, and must report for a personal interview in front of an INS examining officer at the LO. 8 U.S.C. § 1160(1)(A) & (B), 8 C.F.R. § 210.2.

7. This personal interview is an inquisitorial fact-finding procedure, wherein the applicant is asked questions about any subject deemed relevant by the examining officer. The applicant is not, however, afforded the op-

portunity to present witnesses, to cross-examine those who provide evidence against the worker, to challenge the propriety or veracity of any evidence the examining officer has against him/her or even to be apprised if such evidence exists or if the officer perceives any discrepancy or problem in the applicant's case. The applicant is also frequently faced with having to rely on incompetent and unprofessional translators during the interview process.

8. It is at the LO interview stage that Defendants are supposed to separate "frivolous" from "nonfrivolous" applications. Applications which fall in the former category can be denied on-the-spot at the LO, and these applicants are not given work authorization, cannot travel abroad, and are immediately rendered subject to deportation. In deciding which applicants to deny at the LO, Defendants have far exceeded the limitations imposed on them by Congress and, until recently, the provisions of one of their own regulations. Until March 29, 1988, Defendants' regulations provided that SAW applications could be denied at LO's only in cases of clear ineligibility or admitted fraud. 8 C.F.R. § 103.1(n)(2), *amended at* 53 Fed. Reg. 10,064 (1988) (to be codified at 8 C.F.R. § 103.1) (proposed Mar. 29, 1988). Yet while this rule was in effect, Defendants regularly and consistently denied "nonfrivolous" applications at the LO if fraud was merely suspected and/or if the application was not supported by work records and erroneously failed to issue stays of deportation or work authorization to applicants denied in this manner, pending final adjudication of their claim.

9. SAW applications which are *not* denied at the LO are referred by the LO to one of four Regional Processing Facilities (RPF's) for review. In forwarding the application to the RPF, the LO examining officer includes a recommendation that the application either be approved or denied. In making this recommendation, the examining officer frequently assesses the level of suspected fraud in the application (level one being the lowest and level five being the highest). Regardless of the recommendation, the applicant may not be deported or excluded and must be issued an I-688A, an INS document which temporarily authorizes him/her to work in the United States and to travel abroad, pending final adjudication of the claim. 8 U.S.C. § 1160(d)(2), 8 C.F.R. § 210.4(b)(2). Recommendations from the LO are often ignored by the RPF, and several of the applications filed by Plaintiffs in this case was denied by the RPF after being *recommended* for *approval* at the LO.

10. If the RPF approves a SAW application, the applicant is granted lawful temporary resident status, and is issued form I-688, proof of this status. 8 U.S.C. § 1160(a), 8 C.F.R. § 210.4. The I-688 is valid until the applicant becomes a lawful permanent resident of the United States, which in most cases will occur two years after issuance of the I-688. 8 U.S.C. § 1160(a), 8 C.F.R. § 210.5.

11. If the RPF denies a SAW application, the applicant is sent a notice indicating that the application has been denied. For the first several months of the SAW program, Defendants' notices of denial provided virtually no information to the applicant regarding the basis for denial, even though Defendants' regulations provide that SAW applicants whose applications are denied are to be given "written notice setting forth the specific reasons for the denial". 8 C.F.R. § 103.3(a)(2). Additionally, these notices gave applicants only fifteen days to appeal instead

of the thirty days required by 8 C.F.R. § 103.3(a)(2)(i), and did not inform the applicant where to send the appeal. The notices of denial issued by Defendants in recent months are somewhat more informative, and the sufficiency of only the earlier denials are at issue in this case because the Defendants have refused to voluntarily rescind them.

12. A SAW applicant whose application is denied has thirty days to file an administrative appeal to the Legalization Appeals Unit (LAU), whose decision constitutes Defendants' final decision in a SAW case. 8 U.S.C. § 1160(e), 8 C.F.R. 103.3.

13. At the point when Defendants render their final administrative decision in a SAW application, either at the LAU or an unappealed RPF decision, the applicant no longer has work authorization or the ability to travel abroad, and is subject to deportation. Thus, those Plaintiffs and members of the class they seek to represent who were not denied at the LO have received only a temporary reprieve, and sooner or later will lose their work authorization, ability to travel abroad, and will become subject to deportation.

14. The Defendants have devised several procedures and are engaging in numerous practices which deprive Plaintiffs of their rights under IRCA, without due process of law and in violation of the statute. Plaintiffs in this case seek vindication of their Constitutional and statutory rights.

II. JURISDICTION

15. Jurisdiction is conferred pursuant to 28 U.S.C. §§ 1331, 2201-2202 and 8 U.S.C. § 1329.

16. Venue is proper in this Court as the Plaintiffs reside in this judicial district and Defendants have engaged in the challenged practices and policies in this judicial district.

III. PARTIES

17. Plaintiff, HAITIAN REFUGEE CENTER, INC. ("HRC") is a non-profit membership corporation organized under the laws of Florida, with its principal place of business in Miami, Florida. Among HRC's membership are Haitian refugees, many of whom reside in this country with the permission of INS but who do not possess a formal immigration status. HRC provides legal representation to Haitian refugees who are seeking asylum or other legal status in the United States, including Haitians who are seeking benefits under IRCA's SAW Program. Many of HRC's members performed ninety (90) man-days of seasonal agricultural work in the United States between May 1, 1985-May 1, 1986, and provided sufficient evidence to substantiate their claims. Defendants' refusal to recognize that such persons are eligible under IRCA both directly and indirectly injures HRC. It directly injures the organization because it makes HRC's work of assisting the Haitian refugee community more difficult and results in the diversion of HRC's limited resources away from members and clients having other urgent problems. It indirectly injures the organization because it adversely affects those members of the HRC whose applications for Legalization status have been erroneously denied. HRC brings this action to redress its own direct injury and as a representative of its members who have been or will be denied Tempo-

rary Resident status, stays of deportation and work authorization as a result of the policies and practices challenged herein.

18. Plaintiff MIGRATION AND REFUGEE SERVICES OF THE ROMAN CATHOLIC DIOCESE OF PALM BEACH ("RCDPB") is a component of the Roman Catholic Diocese of Palm Beach. Its principle [*sic*] place of business is West Palm Beach, Florida. Many members of parishes within the diocese of Palm Beach are foreign agricultural workers who worked at least 90 man-days in the 1985 and 1986 season, and are therefore potentially eligible for the SAW program. In addition, Plaintiff MIGRATION AND REFUGEE SERVICES OF THE RCDPB has been designated by Defendant INS as a "Qualified Designated Entity" (QDE) under IRCA. QDE's are authorized to provide counseling to aliens about the legalization program, to assist them in filling out applications and obtain documentation, and receive applications for adjustment to temporary resident status. Under IRCA, applications filed with a QDE are deemed to have been filed as of the same date with INS, to whom the QDE's forward the applications for processing. QDF's are authorized to receive fees from applicants and reimbursement from INS for counseling and filing services. The actions of Defendants complained of in this case discourages otherwise eligible SAW applicants from seeking counseling and filing of their applications by Plaintiffs MIGRATION AND REFUGEE SERVICES OF THE RCDPB and prevents them from fulfilling its basic mission of assisting aliens to qualify under IRCA.

19. Plaintiff MARIE GIZELE ANGRAND is a native and citizen of Haiti who entered the United States in July, 1983. She began performing seasonal agricultural work shortly thereafter and continues to earn her livelihood in this manner. On February 4, 1988 she submitted her SAW

application, along with supporting documentation, and was interviewed by agents of the Defendants. Her crew-leader during the period-in-question accompanied her to the interview, although Defendants' agents did not ask to speak to him. Upon termination of the interview, and after the INS examining officer had assessed her documentation as well as her credibility, the LO officially *recommended* to the RPF that Plaintiff ANGRAND's application be *approved* although the RPF subsequently issued her a formal denial. ANGRAND's application for SAW status was denied as a result of the practices and policies challenged herein, including, but not limited to, the application of an improper burden of proof and the deficiency of the process employed to adjudicate her SAW claim.

20. Plaintiff GERMAINE CADET is a fifty-eight year old native and citizen of Haiti who entered the U.S. on November 14, 1985. She began performing seasonal agricultural work shortly thereafter and continues to earn her livelihood in this manner. On June 9, 1987, Plaintiff CADET submitted her SAW application, along with supporting documents, and was interviewed by agents of the Defendants. CADET's application for SAW status was denied as a result of the practices and policies challenged herein, including, but not limited to, the application of an improper burden of proof and the deficiency of the process employed to adjudicate her SAW claim.

21. Plaintiff ROSITA DELVA is a native and citizen of Haiti who entered the U.S. on January 10, 1985, and began performing seasonal agricultural work shortly thereafter. On January 6, 1988, she filed her SAW application, along with supporting documents, and was interviewed by agents of the Defendants. Plaintiff DELVA's interview was translated by another SAW applicant who did not speak fluent English but happened to be in the hallway of the LO where she applied. Plaintiff DELVA's

application for SAW status was denied as a result of the practices and policies challenged herein, including, but not limited to, the application of improper burden of proof, the improper denial of her application at the LO, and the deficiency of the process employed to adjudicate her SAW claim.

22. Plaintiff DIEUMERCIE DESIR is a native and citizen of Haiti who entered the U.S. on October 15, 1985. She began performing seasonal agricultural work shortly thereafter and did so regularly until her pregnancy a few months ago. On June 29, 1987 she filed her SAW application, along with supporting documents, and was interviewed by agents of the Defendants. Upon termination of her interview, and after the examining officer had assessed Plaintiff DESIR's documentation as well as her credibility, the LO officially *recommended* to the RPF that her application be *approved* although the RPF subsequently issued her a formal denial. DESIR's application for SAW status was denied as a result of the practices and policies challenged herein, including, but not limited to, the application of an improper burden of proof and the deficiency of the process employed to adjudicate her SAW claim.

23. Plaintiff GERARD HENRY is a native and citizen of Haiti who entered the U.S. on May 19, 1984. He began performing seasonal agricultural work shortly thereafter and continues to earn his livelihood in this manner on a part-time basis. On November 19, 1987, he filed his SAW application, along with supporting documents, and was interviewed by agents of the Defendants. Plaintiff HENRY's application for SAW status was denied as a result of the practices and policies challenged herein, including, but not limited to, the application of an improper burden of proof, the improper denial of his application at the LO, and the deficiency of the process employed to adjudicate his SAW claim.

24. Plaintiff MARIE FRANCE JEAN-PHILIPPE is a native and citizen of Haiti who entered the U.S. on April 15, 1985. She began performing seasonal agricultural work shortly thereafter and continues to earn her livelihood in this manner. On November 19, 1987, she filed her SAW application, along with supporting documents, and was interviewed by agents of the Defendants. Plaintiff JEAN-PHILLIPPE's application for SAW status was denied as a result of the practices and policies challenged herein, including, but not limited to, the application of an improper burden of proof, the improper denial of her application at the LO, and the deficiency of the process employed to adjudicate her SAW claim.

25. Plaintiff FRANCKLIN JOSEPH is a native and citizen of Haiti who entered the U.S. on January 29, 1985. He began performing seasonal agricultural work shortly thereafter and did so until June, 1987. On June 30, 1987 he filed his SAW application, along with supporting documents, and was interviewed by agents of the Defendants. Upon termination of the interview, and after the INS examining officer had assessed Plaintiff JOSEPH's documentation as well as his credibility, the LO officially *recommended* to the RPF that his application be *approved* although subsequently he was issued a formal denial from the RPF. Plaintiff JOSEPH's application for SAW status was denied as a result of the practices and policies challenged herein, including, but not limited to, the application of an improper burden of proof and the deficiency of the process employed to adjudicate his SAW claim.

26. Plaintiff NOVAMISE JULIEN is a native and citizen of Haiti who entered the U.S. in December, 1983. She began performing seasonal agricultural work shortly thereafter and continues to earn her livelihood in this manner on a part-time basis. On June 24, 1987, she filed her SAW application, along with supporting documents, and

was interviewed by agents of the Defendants. She was subsequently issued a formal denial of her application from the RPF. Plaintiff JULIEN appealed that decision and has since received a final notice of ineligibility from the LAU. Plaintiff JULIEN's application for SAW status was denied as a result of the practices and policies challenged herein, including, but not limited to, the application of an improper burden of proof and the deficiency of the process employed to adjudicate her SAW claim.

27. Plaintiff SYLVIA LINDOR is a native and citizen of Haiti who arrived in the U.S. in 1984. She began performing seasonal agricultural work in 1985 and did so regularly until October, 1986. On August 5, 1987 she filed her SAW application, along with supporting documents, and was interviewed by agents of the Defendants. She was subsequently issued a formal denial of her application from the RPF. Plaintiff LINDOR's application for SAW status was denied as a result of the practices and policies challenged herein, including, but not limited to, the application of an improper burden of proof and the deficiency of the process employed to adjudicate her SAW claim.

28. Plaintiff RECOL NEUS is a native and citizen of Haiti who arrived in the U.S. on September 6, 1984. He began performing seasonal agricultural work shortly thereafter and did so fairly regularly until January, 1987. On June 9, 1987 he filed his SAW application, along with supporting documents, and was interviewed by agents of the Defendants. Upon termination of his interview, and after the examining officer had assessed Plaintiff NEUS' documentation as well as his credibility, the LO officially *recommended* to the RPF that his application be *approved* although the RPF subsequently issued him a formal denial. NEUS' application for SAW status was denied as a result of the practices and policies challenged herein, including, but not limited to, the application of an improper burden of proof and the deficiency of the process employed to adjudicate his SAW claim.

29. Plaintiff ROSE PIERRECINA LEBON PIERRE is a native and citizen of Haiti who arrived in the U.S. in June, 1985 and began performing seasonal agricultural work shortly thereafter. On June 24, 1987 she filed her SAW application, along with supporting documents, and was interviewed by agents of the Defendants. Plaintiff PIERRE's crewleader personally accompanied her to the interview because his work records and various other possessions had been stolen and he had written Defendants asking them not to accept any SAW applications which showed him as employer unless he personally accompanied the applicant to the interview. PIERRE's application for SAW status was denied as a result of the practices and policies challenged herein, including, but not limited to, the application of an improper burden of proof and the deficiency of the process employed to adjudicate his SAW claim.

30. Plaintiff MARIE PHILOMENE SERVILIEN is a native and citizen of Haiti who entered the United States on September 9, 1985, and began performing seasonal agricultural work shortly thereafter. On June 23, 1987, she filed her SAW application, along with supporting documents, and was interviewed by agents of the Defendants. She was subsequently issued a formal denial of her application from the RPF. Plaintiff SERVILIEN appealed that decision and has since received a final notice of ineligibility from the LAU. SERVILIEN's application for SAW status was denied as a result of the practices and policies challenged herein, including, but not limited to, the application of an improper burden of proof and the deficiency of the process employed to adjudicate her SAW claim.

31. Plaintiff HECTOR TREJO TAMAYO is a native and citizen of Mexico who began performing seasonal

agricultural work in 1984 and continues to earn his livelihood in this manner. On June 12, 1987 he filed his SAW application, along with supporting documents, and was interviewed by agents of the Defendants. His employer accompanied him to his interview and was with him during the entire period. About the same time that Plaintiff TREJO received his denial from the RPF, three other SAW applicants who worked for the same employer that he did, and who had submitted their application to Defendants on the same day that he had, received formal approvals on their applications. Plaintiff TREJO's employer cannot understand why this happened since she submitted almost identical documentation for those workers of hers who were approved and those who were denied. TREJO's application for SAW status was denied as a result of the practices and policies challenged herein, including, but not limited to, the application of an improper burden of proof and the deficiency of the process employed to adjudicate her SAW claim.

32. Plaintiff JUAN TAMAYO VEGA is a native and citizen of Mexico who began performing seasonal agricultural work in early 1980 and continues to earn his livelihood in this manner. On June 12, 1987 he filed his SAW application, along with supporting documents, and was interviewed by agents of the Defendants. His employer accompanied him to his interview and was with him during the entire process. About the same time that Plaintiff TAMAYO received his denial from the RPF, three other SAW applicants who worked for the same employer he did, and who had submitted their applications to Defendants on the same day that he had, received formal approvals on their applications. Plaintiff TAMAYO's employer cannot understand why this happened since she submitted almost identical documentation for those workers of hers who were approved and those who were denied. TA-

MAYO's application for SAW status was denied as a result of the practices and policies challenged herein, including, but not limited to, the application of an improper burden of proof and the deficiency of the process employed to adjudicate his SAW claim.

33. Plaintiff MARIE RAQUEL VIERA is a native and citizen of Mexico who entered the U.S. on November 10, 1982. She began performing seasonal agricultural work shortly thereafter and continues to earn her livelihood in this manner. On July 2, 1987 she filed her SAW application, along with supporting documents, and was interviewed by agents of the Defendants. VIERA's application for SAW status was denied as a result of the practices and policies challenged herein, including, but not limited to, the application of an improper burden of proof and the deficiency of the process employed to adjudicate her SAW claim.

34. Plaintiff JEANETTE VIXAMA is a native and citizen of Haiti who entered the United States on February 18, 1982, and began performing seasonal agricultural work in 1984. On August 26, 1987, she filed her SAW application, along with supporting documents, and was interviewed by agents of the Defendants. Plaintiff VIXAMA's application for SAW status was denied as a result of the practices and policies challenged herein, including, but not limited to, the application of an improper burden of proof, the lack of specificity of the Notice of Denial, and the deficiency of the process employed to adjudicate her SAW claim.

35. All of the above-named Plaintiffs performed at least ninety (90) man-days of seasonal agricultural work between May 1, 1985 and May 1, 1986 and were employed by crewleaders licensed by the U.S. Department of Labor, pursuant to the Migrant and Seasonal Agricultural Protection Act ("AWPA"). All were paid in cash for their work

on the farms and never were issued a receipt. In support of their SAW applications, all submitted form I-700 (SAW application form), I-705 (affidavit confirming seasonal agricultural employment), and additional employer affidavits. During their interviews, Plaintiffs answered each of the questions posed by Defendants' agents truthfully and, except as described above, were not given any indication that their answers were incomplete or incorrect. Despite having complied with the requirements set forth by IRCA, Plaintiffs had their applications denied by Defendants on the basis of their unlawful practices and policies, including, but not limited to, the application of an improper burden of proof, the issuance of deficient notices of denial, the improper denial of applications at the LO, and the deficiency of the process employed to adjudicate SAW claims.

36. The applications filed by Plaintiffs DELVA, HENRY, and JEAN-PHILIPPE were denied at the LO, despite the fact that they contained supporting documents demonstrating that the applicants were prima facie eligible for temporary residency. These denials violated IRCA as well as Defendants' own regulations in effect at the time which allowed for denial at the LO only in cases of admitted fraud or clear statutory ineligibility. As a result of Defendant's unlawful and improper actions, these Plaintiffs and members of the class they seek to represent are without work authorization and stays of deportation, pending final adjudication of their claims, and face possible criminal charges based on Defendant's allegations of fraud. But for the Defendants' unlawful and improper actions, these Plaintiffs would be lawful Temporary Residents of the United States and entitled to all the benefits and privileges accorded that status.

37. Defendant PERRY RIVKIND is District Director of the INS for District VI, which includes the State of

Florida. As the official responsible for the administration of the INS in Southern Florida, he is responsible for the local implementation and enforcement of the INA and the regulation challenged herein. Defendant RIVKIND is being sued in his official capacity.

38. Defendant KENNETH PASQUARELL is District Director of the INS for District 26, which includes the states of Alabama and Georgia. As the official responsible for the administration of the INS in these states, he is responsible for the implementation and enforcement of the INA and the regulations challenged herein. Defendant PASQUARELL is being sued in his official capacity.

39. Defendant IMMIGRATION AND NATURALIZATION SERVICE ("INS") is an agency of the United States Government and is the federal agency within the Department of Justice responsible for the lawful administration and implementation of IRCA's SAW program.

40. Defendant ALAN C. NELSON is the duly appointed Commissioner of the INS, an agency of the Department of Justice. Pursuant to Section 103(b) of the Immigration Act, 3 U.S.C. § 1103(b), he is charged with any and all responsibilities and authority in the administration of the INS. Defendant NELSON is the Justice Department official responsible for implementation of the SAW program and, absent action by this Court, he will continue to implement that program pursuant to the unlawfully restrictive policies and practices challenged herein. Defendant NELSON is being sued in his official capacity.

41. Defendant RICHARD NORTON is the duly appointed Associate Commissioner for Examinations of the INS. In that capacity he has the operational responsibility for the SAW program of the Defendant INS and is directly responsible for the practices and policies challenged herein. Defendant NORTON is being sued in his official capacity.

42. Defendant WILLIAM CHAMBERS is Director of the INS' RPF for the Southern Region, located in Dallas, Texas. In that capacity he has the operational responsibility for the RPF, which renders adjudicative decisions on all SAW applications in the states of Florida, Georgia, and Alabama other than those denied by the District Director, and as such is directly responsible for the practices and policies challenged herein. Defendant CHAMBERS is being sued in his official capacity.

43. Defendant WILLIAM SLATTERY is the duly appointed Assistant Commissioner for Legalization of the INS. In that capacity he has the operational responsibility for the SAW program of the Defendant INS, and is directly responsible for the practices and policies challenged herein. Defendant SLATTERY is being sued in his official capacity.

44. Defendant EDWIN MEESE, III is Attorney General of the United States and in that capacity has final authority over the decisions, practices and procedures challenged herein. 8 U.S.C. § 1103(a). The Attorney General has delegated his authority under the INA to officials of the INS. Defendant MEESE is being sued in his official capacity.

45. Defendant UNITED STATES DEPARTMENT OF JUSTICE is the federal agency to which Defendant INS is responsible.

IV. CLASS ACTION ALLEGATIONS

46. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated within the jurisdiction of the Eleventh Circuit Court of Appeals pursuant to Fed. R. Civ. P. 23(a) and 23(b)(1) and (2). The class, as proposed by Plaintiffs, consists of all persons who have applied for, or will in the future apply for, adjustment to Lawful Residence status under the SAW program within

the eighteen (18) month application period and who have been, or will be, denied such status by the INS within this Circuit because of the Defendants' unlawful policies and practices.

47. Individual suits by each member of the respective class would be impracticable because:

a) the number of suits would impose an undue burden on the courts because thousands of persons have been denied SAW status in this Circuit;

b) many members of the class are unaware of their rights and are intimidated due to their status as aliens; and

c) many members of the class, who may be aware of their rights, are unable to bring individual lawsuits due to the financial expenses involved.

48. Plaintiffs are adequate representatives of their respective class because they have been subjected to or threatened with policies and procedures that are identical with the policies and procedures to which the members of the class have been subjected and with which the members of the class have been threatened and because, like members of their respective class, they seek adjustment of status under Section 210 of IRCA.

49. A community of interest exists between Plaintiffs and members of their class in that there are questions of law and fact which are common to all. They seek a determination of whether the INS practices and policies challenged herein are lawful.

50. Defendants have acted or threatened to act on grounds generally applicable to the class, making appropriate final declaratory and injunctive relief with respect to the class as a whole.

51. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or

varying adjudications with respect to individual members of the class which would establish conflicting standards of conduct for the INS.

52. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

53. No administrative remedies under the INA exist which remain to be exhausted that would not be futile or that would provide the relief sought herein.

54. No independent litigation has, as of the time of filing this suit, been brought by any member of the respective class against Defendants as to the issues raised in this Complaint.

55. Plaintiffs' counsel are experienced in class action litigation and can adequately represent the interests of the class members as well as those of the named Plaintiffs.

V. IRREPARABLE INJURY

56. As a result of Defendants' illegal practices and procedures, Plaintiffs and the members of the class they seek to represent have suffered and will continue to suffer irreparable injury. All have been or will be denied their most basic right under IRCA: the right to obtain lawful temporary resident status, and ultimately, lawful permanent resident status. Moreover, Plaintiffs DELVA, HENRY, and JEAN-PHILIPPE and many members of the class they seek to represent have been denied temporary work authorization, stays of deportation and the right to travel abroad, pending final adjudication of their claims. Similarly, Plaintiffs JULIEN and SERVILIEN have received final decisions in their case and therefore are no longer entitled to work authorization and stays of deportation. All Plaintiffs and members of the class they seek to represent can also be improperly subjected to criminal fraud charges.

[*sic*] breaking point and made it impossible for Plaintiff HRC to fulfill its basic mission of meeting the legal needs of the Haitian Community, but they have prevented Plaintiff HRC from attending to pressing problems of many of its clients which are not related to the SAW Program. Additionally, Plaintiff HRC suffers irreparable injury in that Defendants have denied many of Plaintiff HRC's members their rights under IRCA.

58. As a result of Defendants' illegal practices and procedures, Plaintiff Roman Catholic Diocese of Palm Beach (RCDPB) has suffered and will continue to suffer irreparable injury. Plaintiff RCDPD suffers directly because their mission of assisting eligible persons to obtain legal status under IRCA has been thwarted by Defendants' actions. They suffer irreparable injury indirectly because Defendants have denied some of Plaintiff RCDPB's members of their rights under IRCA.

59. As a result of the injury inflicted upon Plaintiffs, Plaintiffs seek and are entitled to reasonable attorney fees.

VI. FIRST CLAIM – DEFENDANTS' IMPOSITION UPON PLAINTIFFS OF AN UNLAWFUL BURDEN OF PROOF IS VIOLATIVE OF IRCA AND THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

60. Paragraphs 1 through 59 are incorporated herein by reference.

61. Section 210(a)(1) of IRCA, 8 U.S.C. § 1160(a)(1), provides that "[t]he Attorney General *shall* adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the Attorney General determines that the alien meets [the requirements for eligibility including most importantly that the alien must have performed farm labor in the United States for at least 90 man-days]" (emphasis added).

62. Section 210(b)(3)(B) of IRCA, 8 U.S.C. § 1160(b)(3)(B)(iii), provides that in the absence of employment records or other precise documentary evidence of work history, an applicant may establish eligibility by presenting any evidence which shows the required agricultural employment "as a matter of just and reasonable inference. In such a case, the burden then shifts to the Attorney General *to disprove* the alien's evidence *with a showing* which negates the reasonableness of the inference . . ." (emphasis added). The legislative history makes clear that Congress intended there be a presumption in favor of evidence submitted by a SAW applicant, unless that evidence is specifically disproved by the Attorney General. *See* H.R. CONF. REP. No. 1000, 99th Cong., 2d Sess. 97, *reprinted in* 1986 U.S. CODE CONG. & ADMIN. NEWS 5840, 5853.

63. Congress therefore, through IRCA, created in eligible persons the right to obtain lawful resident status upon submission of evidence sufficient to create a just and reasonable inference that the applicant performed the required agricultural labor. This right is abridged *only* when specific evidence disproving an applicant's claim is adduced by the Defendants.

64. Defendants' policy and practice of presuming the invalidity of applicants' evidence—despite the lack of specific evidence in the record which indicates that the employer's testimony is false—and of requiring the applicant to produce employment records or other documentary evidence to overcome this presumption, is an arbitrary, capricious, and unlawful departure from the standard of proof required by IRCA and is ultra vires. Defendants have failed, and will continue to fail to apply the appropriate standard by ignoring and negating the just and reasonable inferences to be drawn from the evidence submitted by Plaintiffs and members of the class they seek to represent

and by requiring Plaintiffs to produce nonexistent documents.

65. Defendants' actions have caused, and will cause, Plaintiffs and members of the class they seek to represent to suffer injury in the form of deprivation of their statutory entitlement to lawful residence, to stays of deportation, to work authorization, and to travel abroad. The Defendants' actions are not only violative of IRCA but they violate the Due Process Clause of the Fifth Amendment of the United States Constitution.

VII. SECOND CLAIM—DEFENDANTS' IMPOSITION OF A BURDEN OF PROOF UPON PLAINTIFFS OTHER THAN THAT REQUIRED BY IRCA VIOLATES THE ADMINISTRATIVE PROCEDURES ACT

66. Paragraphs 1 through 59 are incorporated herein by reference.

67. Defendants' actions have caused, and will cause, Plaintiffs and members of the class they seek to represent to suffer injury in the form of denial of the opportunity to comment on the rule, prior to implementation, and to be apprised before submission of their applications as to the precise burden of proof required of them.

68. Defendants' decision to require work records and/or more specific documentary evidence than that submitted by Plaintiffs and members of the class they seek to represent constitutes administrative rule-making within the meaning of the Administrative Procedure Act, 5 U.S.C. § 500 *et seq.* ("APA"). Defendants promulgated this rule without providing notice thereof in the Federal Register and without providing an opportunity for comment, in violation of the APA, 5 U.S.C. § 553.

VIII.[1] THIRD CLAIM – DEFENDANTS' DENIAL OF "NONFRIVOLOUS" SAW APPLICATIONS AT LEGALIZATION OFFICES PRIOR TO MARCH 29, 1988, VIOLATES PLAINTIFFS' RIGHTS UNDER IRCA AND THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

69. Paragraphs 1 through 59 are incorporated herein by reference.

70. IRCA specifies that any alien who presents a *nonfrivolous* application for adjustment of status under the SAW program "may not be deported or excluded and . . . shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit until a *final determination* of the application has been made." (emphasis added). 8 U.S.C. §§ 1160(d)(2)(A) and (B), 8 C.F.R. § 210.4(b)(2). Similarly, the Defendants' regulations provide that applicants for lawful resident status shall be allowed to travel outside the United States upon submission of a "nonfrivolous" application. 8 C.F.R. § 210.4(b)(2).

71. In accordance with IRCA, the Defendants' regulations at the time that Plaintiffs and many members of the class they seek to represent submitted their applications provided that SAW applications could be denied by LO's *only* "if the alien clearly fail[ed] to meet statutory requirements or the alien admit[ed] fraud or misrepresentation in the application process." 8 C.F.R. § 103.1(n)(2), *amended at* 53 Fed. Reg. 10,064 (1988) (to be codified at 8 C.F.R. § 103:1) (proposed Mar. 29, 1988). Yet Defendants impermissibly and in violation of IRCA, their own regulations, and the Due Process Clause of the Fifth Amendment, regularly issued summary denials of SAW applications at the LO prior to March 29, 1988, for reasons other than admitted fraud or clear failure to meet the statutory requirements.

72. Congress has defined a "nonfrivolous" application as one which identifies the nature of the proof which will be submitted along with the employer, and which acknowledges both that the 90 man-days of seasonal work have been performed and the penalties for fraud. H.R. Conf. Rep. No. 1000, 99th Cong., 2d Sess. 97, *reprinted in* 1986 U.S. CODE CONG., & ADMIN. NEWS 5840, 5852. Congress also made clear its intent that INS not exceed these criteria in determining whether an application is frivolous due to their concern that undocumented workers be encouraged to apply for legal status. *Id.*

73. Plaintiffs and members of the class they seek to represent who submitted "nonfrivolous" applications supported by employer affidavits and who were impermissibly denied at the LO did not have their applications forwarded to the RPF for review, were not issued work authorization, and are immediately subject to deportation or exclusion. The Defendants have declined to rescind their denials, to issue employment authorization, and to grant Plaintiffs their right to travel.

74. Defendants' actions have caused, and will cause, Plaintiffs and members of the class they seek to represent to suffer injury in the form of deprivation of review of their claims by the RPF as well as deprivation of their statutory entitlement to work authorization, to stays of exclusion or deportation, and to travel abroad, pending final adjudication of their claims by the LAU. Defendants' actions are in violation of Plaintiffs' statutory and due process rights.

IX. FOURTH CLAIM – DEFENDANTS' DENIAL OF "NON-FRIVOLOUS" SAW APPLICATIONS AT LEGALIZATION OFFICES PRIOR TO MARCH 29, 1988, VIOLATES THE ADMINISTRATIVE PROCEDURE ACT

75. Paragraphs 1 through 59 are incorporated herein by reference.

76. Until March 29, 1988, the District Director could deny SAW applications at LO's *only* in cases where the applicant was clearly not prima facie eligible or if s/he admitted to fraud or misrepresentation in the application process. 8 C.F.R. § 103.1(n)(2). Plaintiffs and members of the class they seek to represent who were denied at the LO prior to March 29, 1988, did not commit fraud or misrepresentation and submitted employer affidavits in support of their applications, thereby presenting at minimum a prima facie case that they met the statutory requirements. The Defendants denied these applications at the LO simply because they suspected the application was fraudulent and/or because no work records were submitted. Such action granted the District Director broader authority to deny on-the-spot than was granted him under the regulatory standard and amounted to a fundamental change in the general nature and requirements of the SAW application process.

77. Defendants' actions have caused, and will cause, Plaintiffs and members of the class they seek to represent to suffer injury in the form of denial of the opportunity to comment on the rule, prior to its implementation, and to be apprised before submission of their applications as to the precise burden of proof required of them.

78. Defendants' practice of denying SAW applications at local LO's prior to March 29, 1988, for mere suspicion of fraud and/or for lack of employer records, constitutes administrative rule-making within the meaning of the APA. 5 U.S.C. § 500 *et seq*. Defendants promulgated this

rule without providing notice thereof in the Federal Register and without providing an opportunity for comment, in violation of the APA. 5 U.S.C. § 553. Defendants have refused to rescind these denials.

X. FIFTH CLAIM – DEFENDANTS' NOTICES OF DENIAL OF SAW APPLICATIONS VIOLATES IRCA AND THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

79. Paragraphs 1 through 59 are incorporated herein by reference.

80. During the first several months of the SAW program, Defendants sent form Notices of Denial which summarily concluded only that "[y]ou have failed to prove that you have been employed in agricultural work for at least 90 man-days during the statutory period between May 1, 1985, and May 1, 1986, as required by Section 210 of the IRCA". These denials were improperly issued on form I-292, rather than form I-692, generally incorrectly informed applicants they had 15 days rather than 30 to appeal the decision, and failed to apprise them of where to send such an appeal.

81. While Defendants in recent months are no longer committing these errors in issuing denials and their grounds for denial tend to be somewhat more specific, Defendants refused to rescind previous denials and refused to send corrected Notices of Denial to all those Plaintiffs and members of the class they seek to represent who received the seriously deficient notices which Defendants initially issued.

82. Defendants' deficient notices of denial are vague, conclusory and do not state the specific reasons for the denial, thus in an arbitrary and capricious manner depriving Plaintiffs and members of the class they seek to represent of their rights under IRCA.

83. Defendants' actions have caused, and will cause, Plaintiffs and members of the class they seek to represent to suffer injury in the form of inability to know why their applications have been denied and the consequent inability to effective [*sic*] appeal.

84. 8 U.S.C. § 1160(e) provides SAW applicants whose applications are denied the right to appeal. The Defendants' own regulations also provide that such applicants are to be given "written notice setting forth the specific reasons for the denial." 8 C.F.R. § 103.3(a)(2). Defendants' actions are violative of their own statutes and regulations and are therefore also violative of the Due Process Clause of the Fifth Amendment.

XI. SIXTH CLAIM—DEFENDANTS' APPLICATION/PERSONAL INTERVIEW PROCESS VIOLATES PLAINTIFFS' STATUTORY AND FIFTH AMENDMENT RIGHTS TO DUE PROCESS

85. Paragraphs 1 through 59 are incorporated herein by reference.

86. The Defendants have established a process for intake and consideration of SAW applications which includes submission of an application, submission of documentary supporting evidence, and an interview with an INS examining officer. The interview, which is an extremely informal, one-sided interrogation conducted by the INS examining officer, is the only point at which the veracity of the applicants' testimony is examined in a live setting. The practices established by Defendants to implement the SAW program and in conducting the interview deprive Plaintiffs and members of the class they seek to represent of their right to obtain lawful resident status under the SAW Program in an arbitrary and capricious manner, in violation of INA § 210, and without due process of law in violation of the Due Process and Equal Protection guarantees of the Fifth Amendment because it fails to provide them with a fair opportunity to present their claims in the following manner:

a) The interview provides no opportunity for the applicant to be apprised of adverse evidence, including the examining officer's perceptions of discrepancies in the applicant's testimony. Although such evidence may be used by the INS to deny applications, the process denies the applicant any opportunity to cross-examine adverse witnesses or to otherwise rebut contrary evidence on the record prior to the initial denial;

b) The applicants are, in most cases, denied the opportunity to present live witnesses on their own behalf and are not permitted to obtain subpoenas to compel the attendance of witnesses or the production of books, papers, and other documentary evidence;

c) Applicants, in particular Haitian SAW's who often speak only Creole, have not been afforded the services of competent translators during the personal interview, denying them the fundamental right to understand and effectively participate in their own interviews; and

d) No verbatim recording of the personal interview is made.

87. As a result of these procedural deficiencies, Plaintiffs and members of the class they seek to represent have suffered, and will continue to suffer, injury in the form of deprivation of their statutory entitlement to lawful residence, to stays of deportation, to obtain work authorization, and to travel abroad, all without due process of law and in violation of IRCA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

A. Assume jurisdiction over this action;

B. Order that Plaintiffs may maintain this action as a class action pursuant to Rule 23, Fed. R. Civ. P.;

C. Declare that:

1) the policies and procedures employed by Defendants for adjudication of SAW applications are arbitrary, capricious and deprive Plaintiffs and members of the class they seek to represent of their rights under IRCA and the Due Process Clause of the Fifth Amendment;
2) the Defendants have applied an improper burden of proof in violation of IRCA and the Due Process Clause of the Fifth Amendment;
3) that Defendants' decision to require work records and/or more specific documentary evidence than that submitted by Plaintiffs and members of the class they seek to represent is an invalid rule under the APA, 5 U.S.C. § 553, because Defendants did not provide notice and an opportunity to comment prior to making and implementing this rule;
4) that Defendants' denials of SAW applications at Legalization Offices prior to March 29, 1988 for mere suspicion of fraud deprived Plaintiffs and members of the class they seek to represent of their rights without due process of law;
5) that Defendants' decision to deny SAW applications at Legalization Offices for mere suspicion of fraud is an invalid rule under the APA, 5 U.S.C. § 553, because Defendants did not provide notice and an opportunity to comment prior to making and implementing this rule;

6) that Defendants' vague, conclusory notices of denial which do not state the specific reasons for the denial of SAW applications deprive Plaintiffs and members of the class they seek to represent of their rights without due process of law; and
7) that Defendants' interview process is deficient under the statute and Due Process Clause of the Fifth Amendment.

D. Issue preliminary and permanent injunctive relief against the Defendants, their agents, officers and successors in office as follows:

1) Requiring Defendants to apply the appropriate burden of proof to all SAW applications and to reconsider all previous applications in light of the correct burden of proof;
2) Enjoining them from continuing to engage in policies and practices complained of in Plaintiffs' Complaint;
3) Requiring them to implement practices and procedures for use in the SAW application/personal interview process which are consistent with the rights of Plaintiffs and members of the class they seek to represent and which accord to them full statutory and due process rights, including at least:
   a) that Plaintiffs and members of the class they seek to represent be afforded, during the interview, an opportunity to clarify any alleged contradictions, discrepancies or suspect statements;
   b) that Plaintiffs and members of the class they seek to represent be apprised of and given an opportunity to rebut, during the interview, any adverse evidence which the examining officer has;

c) that Plaintiffs and members of the class they seek to represent be afforded the opportunity to present live witnesses at the interview; and

d) that Plaintiffs and members of the class they seek to represent be afforded the services of competent translators during the interview.

4) Requiring them to adjudicate SAW applications consistent with federal statutes and the U.S. Constitution;

5) Requiring them to provide notice and an opportunity to comment before implementing any rules regarding the burden and standard of proof to be used in adjudicating SAW applications;

6) Requiring them to rescind all denials of applications issued at the LO prior to March 29, 1988;

7) Requiring them to rescind notices of denial of SAW applications which do not set forth the specific reasons for the denial;

8) Requiring them to set aside all denials of SAW applications filed by Plaintiffs and members of the class they seek to represent who are subject to the practices, policies, and procedures addressed in this complaint;

9) Requiring them to reconsider all SAW applications filed by Plaintiffs and members of the class they seek to represent utilizing practices, procedures and rules regarding proof which are consistent with the rights of Plaintiffs and members of the class they seek to represent and which accord them full due process of law as described in this Complaint; and

10) Requiring them to grant stays of deportation and work authorization to Plaintiffs and members of the class they seek to represent, pending final adjudication of their SAW applications.

E. Grant to Plaintiffs their reasonable costs and attorneys' fees.

F. Grant such additional relief as the Court deems just and necessary to provide an effective remedy in this case.

Respectfully submitted,

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32 NE 54th Street
Miami, Florida 33138
(305) 757-8538

By: /s/ Cheryl A.E. Little
CHERYL A.E. LITTLE, ESQ.

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By: /s/ Robert Williams
ROBERT WILLIAMS, ESQ.

FLORIDA RURAL LEGAL SERVICES, INC.
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Bartow, Florida 33830
(305) 534-1781

By: /s/ Michael Guare
MICHAEL GUARE, ESQ.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 88-1066-CIV-ATKINS

HAITIAN REFUGEE CENTER, INC., ET AL., PLAINTIFFS

v.

ALAN C. NELSON, COMMISSIONER OF IMMIGRATION AND NATURALIZATION SERVICE, ET AL., DEFENDANTS

[Sept. 26, 1988]

ORDER DENYING THE DEFENDANTS' MOTION FOR A STAY PENDING APPEAL

THIS CAUSE is before the court on the defendants motion seeking a stay of paragraphs 5, 6, 7, and 8 of this court's preliminary injunction order. After careful consideration, it is

ORDERED AND ADJUDGED that the motion is *DENIED.*

The defendants have failed to adequately demonstrate the factors outlined by the Supreme Court as determinative of a stay pending appeal: (1) a likelihood of success on the merits; (2) irreparable injury; (3) likelihood of injury to other parties interested in the proceedings; and (4) public interest. *Hilton v. Braunskill*, 107 S.Ct. 2113, 2119 (1987) (citations omitted). The defendants objections stretches the meaning of the challenged provisions beyond logical interpretation.

Paragraph 5 provides that the "INS shall issue temporary work authorization to all class members pending the final outcome of the proceedings in this case and a final decision on the merits of their individual cases." The

class members are "all persons who have applied for, or will apply for, adjustment to lawful residence under the Special Agricultural Worker ("SAW") program within the eighteen month period and who have been or will be denied such status by the INS within this circuit because of the defendants' unlawful practices and policies." Paragraph 5, then, applies only to the members of the certified class. The class encompasses only those filing nonfrivolous applications. Title 8 U.S.C. § 1160(d)(2) mandates that the Attorney General grant authorization to engage in employment to all aliens who present nonfrivolous applications for adjustment of status during the application period. Therefore the provision of this court's order, when read properly in context with the entire order, extends no further that the statute and regulations promulgated thereunder. *See* 8 C.F.R. § 210.4(b).

Paragraph 7 directs the INS to allow applicants to present witnesses at the interview. The regulations specifically provide that "[a]ffidavits and other personal testimony by an applicant which are not corroborated, in whole or in part, by other credible evidence (including testimony of persons other than the applicant) will not serve to meet the applicant's burden of proof." 8 C.F.R. § 210.3(b)(3). The testimony of persons other than the applicant is not limited to documentary testimony, in fact, section 210.3(c)(3) requires that an affiant who swears to the applicant's employment must either provide a certified copy of corroborating records "*or state the affiant's willingness to personally verify the information provided.*" (emphasis added). Again, this court provides no greater allowances than contained within the regulations themselves.

Paragraph 8 requires that the interviewers particularize the evidence offered, testimony taken, credibility determinations, and other relevant information on the form I-696. The defendants argument is illogical. On the one

hand the government states that it already requires interviewers to provide sufficiently detailed accounts of the interview. On the other, it stresses that being required to do so will result in hampering the process that enables effective and efficient adjudication of SAW claims. Such a circular argument has no persuasive force. The defendants themselves noted that the form I-696 is for the purpose of noting any inconsistencies between the applicant's documents and information elicited at the interview. A provision requiring the notation of the basis of an interviewer's credibility determinations, especially when the very outcome of the interview rests on a credibility determination, is not unreasonable or overly restrictive.

Finally, the defendants challenge paragraph 6 which requires that the Legalization maintain competent translators. The defendants argue that using competent translators will delay the number of interviews that can be conducted each day and may affect the number of LOs that can be kept open. The importance of an interpreter to non-English speaking persons faced with a complex proceeding cannot be overemphasized and in fact has been recognized by numerous circuits as well as the INS itself. *Augustin v. Sava*, 735 F.2d 32, 37 (2d Cir. 1984) ("A hearing is of no value when the alien and the judge are not understood."); *Tejeda-Mata v. Immigration & Naturalization Service*, 626 F.2d 721, 726 (9th Cir. 1980) ("[T]his court and others have repeatedly recognized the importance of an interpreter to the fundamental fairness of such a hearing if the alien cannot speak English fluently.") (citations omitted); *Leung v. Immigration & Naturalization Service*, 531 F.2d 166, 168 (3d Cir. 1876) (allowances should be made for language difficulties when they potentially prejudice an alien's case); *Matter of Tomas*, Interim Dec. 3032 (B.I.A. August 6, 1987).

In *Tomas*, the BIA found the presence of a competent interpreter crucial to the fundamental fairness of the hearing, especially in light of the fact that the applications for asylum at stake in the case was based largely upon the applicant's own testimony. To suggest that, in the case before this court, the stakes are any less important is unconscionable. As the court in *Augustin* pointed out, in the absence of liberty or property interests which originate in the Constitution itself, constitutionally protected interests may have their source in positive rules of law creating a substantive entitlement to a particular government entitlement. 735 F.2d at 37; *see also Haitian Refugee Center, Inc. v. Smith*, 676 F.2d 1023, 1028 (11th Cir. 1982).

It is undisputed that the plaintiffs are not entitled to the fully panoply of due process rights. Congress, however, has created a right to petition for temporary residence and has provided a manner in which the alien may do so. To make it virtually impossible to take advantage of the benefit bestowed by Congress violates any notion of fundamental fairness.

This court considered and weighed the increased administrative burden that its preliminary injunction would incur upon the defendants. The stakes at risk for the plaintiffs, however, so far outweigh those costs that they pale in comparison. Therefore the defendants' motion to stay the preliminary injunction pending appeal is *DENIED*.

DONE AND ORDERED at Miami, Florida this 27th day of September, 1988.

/s/ Clyde Atkins
United States District Judge

PLAINTIFFS' EXHIBIT 28

INTERPRETER RELEASES, April 4, 1988

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benefit 100 to 300 children in New York State's foster care system.

Because of its length, the INS General Counsel's legal opinion is not reproduced here. However, the policy memorandum, which summarizes the legal opinion, is reproduced in Appendix II of this *Release*.

6. INS Moves to Reduce Legalization Backlog

The following is the text of INS Legalization Wire No. 59, sent March 15, 1988 to all INS field offices by the Service's Central Office in Washington, DC (file CO 1588):

SUBJECTS: REDUCTION OF DENIAL BACKLOG AT REGIONAL PROCESSING FACILITIES; ISSUANCE OF DENIALS AT LEGALIZATION OFFICES.

REDUCTION OF RPF DENIAL BACKLOG.

AS OF FEBRUARY 25, 1988, THERE WERE A TOTAL OF 1,180,694 CASES IN THE LAPS DATA BASE. OF THAT TOTAL, 11% OR 126,446 WERE RECOMMENDED FOR DENIAL, YET, ONLY 9,496 FINAL DENIALS HAD BEEN ISSUED. WHILE IT IS ACKNOWLEDGED THAT MANY OF THE APPLICATIONS ARE IN THE PIPELINE AND THAT MANY OTHER CASES THAT ARE RECOMMENDED FOR DENIAL WILL BE RECONSIDERED AND REVERSED AT THE RPF, THE VARIANCE INVOLVED IN THIS INSTANCE INDICATES AN UNACCEPTABLE

BACKLOG OF CASES THAT MERELY REQUIRE THE ISSUANCE OF A FINAL DECISION. ACCORDINGLY, RPF DIRECTORS ARE INSTRUCTED TO REDUCE THEIR RESPECTIVE BACKLOGS OF APPLICATIONS RECOMMENDED FOR DENIAL BY ISSUING FINAL DECISIONS WHENEVER POSSIBLE. APPLICANTS AT THE RPF WHICH FAIL TO ESTABLISH ELIGIBILITY BUT ARE TIED TO CASES PENDING FIELD INVESTIGATION SHOULD NO LONGER BE HELD PENDING COMPLETION OF THE INVESTIGATION UNLESS THE U.S. ATTORNEY'S OFFICE HAS REQUESTED THE SERVICE TO KEEP SUCH CASES OPEN.

DENIALS AT LEGALIZATION OFFICES.

LEGALIZATION WIRES NO. 45 AND NO. 48 URGED DISTRICT DIRECTORS TO DENY I-687 AND I-700 APPLICATIONS AT LEGALIZATION OFFICES (LOs) IN CASES WHERE THE APPLICANT IS CLEARLY INELIGIBLE FOR LEGALIZATION OR SAW STATUS.

WHEN THE APPLICATION CONTAINS MATERIAL INCONSISTENCIES, CONTRADICTORY INFORMATION, OR IF THERE ARE DISCREPANCIES BETWEEN MATERIAL INFORMATION IN THE APPLICATION AND THAT PROVIDED DURING THE INTERVIEW, THE CLAIMED EMPLOYMENT OR RESIDENCE IN QUESTION SHOULD BE DISALLOWED. IF ELIGIBILITY CANNOT BE ESTABLISHED WITHOUT THE DISCREDITED EMPLOYMENT OR RESIDENCE, THE APPLICANT HAS NOT MET HIS BURDEN OF PROOF AND THE APPLICATION SHOULD BE DENIED BY THE LO FOR FAILURE TO ESTABLISH ELIGIBILITY.

THE BASIS FOR DENIAL SHALL BE SET FORTH ON FORM I-692 IDENTIFYING THE SPECIFIC REASONS FOR DISALLOWING THE CLAIMED EMPLOYMENT, ENTRY DATE, RESIDENCE OR OTHER POINTS IN QUESTION. THE APPLICANT SHALL BE ADVISED OF THE RIGHT TO APPEAL AND PROVIDED WITH THE NOTICE OF APPEAL (FORM I-694). THE APPLICANT SHALL NOT BE GRANTED EMPLOYMENT AUTHORIZATION.

IF THE APPLICATION IS NOT DENIED AT THE LO, THE WORKSHEET SHOULD CONTAIN ALL THE SPECIFIC INFORMATION NECESSARY TO SUPPORT A DENIAL BY THE RPF.

Legalization Wires No. 45 and 48, referred to in this cable, are reproduced in *Interpreter Releases*, Vol. 64, No. 44, November 16, 1987, pp. 1279-1280; Vol. 65, No. 4, January 25, 1988, p. 82.

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U.S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

REFER TO THIS FILE AS
A90 466 242

JEANNETTE VELLUA
144 SE 3RD AVENUE
DELRAY BEACH, FL 33444

Date: 31 AUG 87

DECISION

Upon consideration, it is ordered that your application (I-700) for status as a temporary resident alien under Section 210 be denied for the following reasons:

YOU HAVE FAILED TO PROVE THAT YOU HAVE BEEN EMPLOYED IN AGRICULTURAL WORK FOR AT LEAST 90 MANDAYS DURING THE STATUTORY PERIOD BETWEEN MAY 1, 1985 AND MAY 1, 1986 AS REQUIRED BY SECTION 210 OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

If you desire to appeal this decision, you may do so. Your notice of appeal must be filed within 15 days from the date of this notice. (18 days if this notice was received by mail). If no appeal is filed within the time allowed, this decision is final. Appeal in your case may be made to:

☐ ~~Board of Immigration Appeals in Washington, D.C. on the enclosed Form I-~~ ~~is required.~~

☒ Regional Commissioner on the enclosed Form I-694. (A fee of $50.00 is required).

If an appeal is desired, the Notice of Appeal shall be executed and filed with this office, together with the required fee. A brief or other written statement in support of your appeal may be submitted with the Notice of Appeal.

Any question which you may have will be answered by the local immigration office nearest to your residence, or at the address shown in the heading to this letter.

Sincerely yours,

District Director

PLAINTIFFS' EXHIBIT 30

PLAINTIFFS' EXHIBIT 35

U.S. Department of Justice
Immigration and Naturalization Service

Legalization

A90923931

Applicant's Name	A - Number	Fee Receipt Number
[redacted] Gerard	90 923 931	XWS8803580027
Preparer's Name and I.D. Number	L.O.	Date
[redacted]	XWS	19 Nov 87
Designated Designated entity I.D. No.	Attorney or Volag I.D. No.	
8 U.S.C. 552(b)(6)		

A. Check blocks for *each* type of supporting documents attached to application:

- ☐ 1. Leases/Rent Receipts
- ☐ 2. Employer/Union - Business Records
- ☐ 3. Tax Records
- ☐ 4. U.S. licenses and I.D.'s
- ☐ 5. Marriage Certificates
- ☑ 6. Church/ Baptismal Records
- ☐ 7. Postmarked Mail
- ☐ 8. Utility/Phone Receipts
- ☐ 9. School Records
- ☐ 10. Bank/Check Records
- ☐ 11. Passports/Foreign I.D.'s
- ☐ 12. Child's Birth Certificate(s)
- ☐ 13. Affidavits of Friend(s)/ Relative(s)
- ☐ 14. Other: _____

SAW Employment Documentation

- ☐ 15. Government Employment Records
- ☐ 16. Grower Records
- ☐ 17. Farm Labor Contractor Records
- ☐ 18. Union Records
- ☐ 19. Pay Stubs/Work Receipts
- ☐ 20. Tax Records
- ☑ 21. Affidavits of Growers, Foremen, Farm Labor Contractors, or Union Officials
- ☐ 22. Other: _____

B. Examiner recommends application be: (Check appropriate block(s) below and note basis for recommendation(s) on reverse).

- ☐ 1. Granted
- ☐ 2. Denied
- ☑ 3. Denied at LO (Complete Section C or D)
- ☐ 4. Fraud Suspected
- ☐ 5. Verification Requested

Level of Suspicion (Check appropriate block below: #5 is highest level.)
☐ 1. ☐ 2. ☐ 3. ☐ 4. ☑ 5.

Denied Statutorily because of the following:

- ☐ 1. Documents do not establish: ☐ (a) Identity ☐ (b) Residence ☐ (c) Employment
- ☐ 2. Inadmissible under Section 212 (a) _____ of the Act.
- ☐ 3. In Legal Status during eligibility period.

D. Denied - Positive Fraud Established:

- ☑ 1. Documentary (List fraudulent document(s) presented, by category described above.)

I-705 affidavits

- ☐ 2. False statements

E. For Secondary Review Only:

Reviewer's Name	Date of Review
Reviewer's Signature	Reversal Warranted? ☐ Yes ☐ No

Reasons for Reversal (If applicable)

WWWW WWW

Form [illegible] 4/17/87

USP LVN

BEST AVAILABLE COPY

PLAINTIFFS' EXHIBIT 36

Immigration and Naturalization Service

A26723732

Applicant's Name	A - Number	Fee Receipt Number
MARIE F. [illegible]-PHILIPPE	26-923-932	XUS8035301
Examiner's Name and I.D. Number	I.O.	Date
[redacted]	XUS	11/19/87
Qualified Designated Entity I.D. No.	Attorney or Volag I.D. No.	
8 U.S.C. 552 (h)(6)		

A. Check blocks for *each* type of supporting documents attached to application:

- ☐ 1. Leases/Rent Receipts
- ☐ 2. Employer/Union/ Business Records
- ☐ 3. Tax Records
- ☐ 4. U.S. licenses and I.D.'s
- ☐ 5. Marriage Certificates
- ☐ 6. Church/ Baptismal Records
- ☐ 7. Postmarked Mail
- ☐ 8. Utility/Phone Receipts
- ☐ 9. School Records
- ☐ 10. Bank/Check Records
- ☐ 11. Passports/Foreign I.D.'s
- ☐ 12. Child's Birth Certificate(s)
- ☐ 13. Affidavits of Friend(s)/ Relative(s)
- ☐ 14. Other: _____

SAW Employment Documentation

- ☐ 15. Government Employment Records
- ☒ 16. Grower Records
- ☒ 17. Farm Labor Contractor Records
- ☐ 18. Union Records
- ☐ 19. Pay Stubs/Work Receipts
- ☐ 20. Tax Records
- ☒ 21. Affidavits of Growers, Foremen, Farm Labor Contractors, or Union Officials
- ☐ 22. Other: I-210

B. Examiner recommends application be: (Check appropriate block(s) below and note basis for recommendation(s) on reverse).

- ☐ 1. Granted.
- ☒ 2. Denied [illegible]
- ☒ 3. Denied at LO (Complete Section C or D)
- ☐ 4. Fraud Suspected
- ☐ 5. Verification Requested

Level of Suspicion (Check appropriate block below: #5 is highest level.)

☐ 1. ☐ 2. ☐ 3. ☐ 4. ☐ 5.

C. Denied Statutorily because of the following:

- ☐ 1. Documents do not establish: ☐ (a) Identity ☐ (b) Residence ☐ (c) Employment
- ☐ 2. Inadmissible under Section 212 (a) _____ of the Act.
- ☐ 3. In Legal Status during eligibility period.

D. Denied - Positive Fraud Established:

☒ 1. Documentary (List fraudulent document(s) presented, by category described above.)

F-70.

☐ 2. False statements

E. For Secondary Review Only:

Reviewer's Name	Date of Review
Reviewer's Signature	Reversal Warranted? ☐ Yes ☐ No

Reasons for Reversal (If applicable)

Form I 696 (04/17/87)

PLAINTIFFS' EXHIBIT 53

PKW:cw

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 88-1066-CIV-ATKINS

HAITIAN REFUGEE CENTER, ET AL., PLAINTIFFS

vs.

ALAN C. NELSON, COMMISSIONER OF IMMIGRATION AND NATURALIZATION SERVICE, ET AL., DEFENDANTS

STIPULATION OF COUNSEL

Counsel for the parties hereby stipulate and agree to the following facts for use in this case.

1. The INS does not provide interpreters at government-expense at the interview for applicants for Special Agriculture Worker (SAW) status. Applicants who do not speak English must provide their own interpreters to translate their language and English. Some INS Legalization Offices have bi-lingual employees who assist non-English speakers when they are available. The INS does not inquire into the competence or proficiency of the interpreters brought by SAW applicants to assist them beyond asking if they understand English and the language for which they are interpreting.

2. The INS Okeechobee Legalization Office has never had an employee who spoke Creole. It has and continues to have employees who are bi-lingual in English and Spanish. Until March, 1988, that office had a bi-lingual employee who spoke French and was able to speak with and interpret for Haitians.

3. As of July 1, 1988, the Legalization Offices in Florida had received 77,609 SAW applications. Of those, 30,425 were from applicants who identified themselves as Haitians.

4. INS does not record and prepare a verbatim transcript of SAW application interviews.

5. INS does not make available for inspection by applicants the worksheet prepared at Legalization Offices except pursuant to a request made under the Freedom of Information Act.

6. Prior to March 29, 1988, INS Legalization Offices in the Miami District, which comprises the State of Florida, denied 1,946 SAW applications.

For Plaintiffs:	For Defendants;
/s/ ROBERT WILLIAMS	/s/ ALLEN W. HAUSMAN
Robert Williams	Allen W. Hausman
Dated: July 8, 1988	Dated: 7/8/88

PLAINTIFFS' EXHIBIT 54

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U.S. Department of Justice
Immigration and Naturalization Service

Application for Temporar
Special Agricultural Worker (Section 210 of the Immigra...

A98923932

Please begin with item #1, after carefully reading the instructions.

The block below is for *Government Use Only.*

Name and Location (City or Town) of Qualified Designated Entity	Fee Stamp 105
	Fee Receipt No. (This application) XWS88035301 $B
	Principal Applicant's File No. A- 90-923-9
Qualified Designated Entity I.D. No.	File No. (This applicant) A-

NOV 1987 RECEIVED MIAMI-XWS

Applicant: Do not write above this line. See instructions before filling in application. If you need more space to answer fully any question on this form, use a separate sheet and identify each answer with the number of the corresponding question. *Fill in with typewriter or print in block letters in ink.*

1 I hereby apply for status as indicated by the block checked below (check block A or B)

☐ A Group I: Temporary Residence as an alien who has performed seasonal agricultural services in the U.S. for at least 90 days during each of the 12 month periods ending on May 1, 1984, 1985, and 1986.

☒ B Group II: Temporary Residence as an alien who has performed seasonal agricultural services in the U.S. for at least 90 days during the 12 month period ending on May 1, 1986.

2 Family Name (Last Name in CAPITAL Letters)	(First Name)	(Middle Name)	3 Date of Birth (Month/Day/Year)
JEAN-Philippe	Marie	France	09/22/53

4 Other Names Used or Known by (including maiden name, if married)	5 Telephone Numbers (Include Area Codes)
SAME	Home: NONE Work:

6 Address (No. and Street)	(Apt. No.)	(Town or City)	(State/Country)	(ZIP/Postal Code)
163 N.W 57 Street	# B,	Miami	Fla	33127

7 Last Address outside the U.S. (City or Town)	(County, Province or State)	(Country)
Y. Au. 7	Carrefour Torre 10 #408	Haiti

8 Sex ☐ Male ☒ Female

9 Race ☐ Asian or Pacific Islander ☒ Black, not of Hispanic origin ☐ Other (specify below) ☐ Hispanic ☐ White, not of Hispanic origin

10 Marital Status ☒ Never Married ☐ Divorced ☐ Now Married ☐ Separated ☐ Widowed

11 Country of Citizenship: Haiti

12 Place of Birth (City or Town)	(County, Province or State)	(Country)
Terre-Neuve	Bois Neuf	Haiti

13 Have you previously applied for temporary residence as a Special Agricultural Worker?
☒ No ☐ Yes (If "Yes" give date, place of filing, and final disposition, if known)

14 Do you have any other record with I&NS?
☒ No ☐ Yes (If "Yes" give number(s))
A- _____
Other _____

15 When did you last come to the U.S.? (Month/Day/Year): 04/15/85

16 Manner of Entry (Visitor, Student, Crewman, etc.)
☐ With visa (visitor, student, etc.) specify _____
☒ Without visa Boat EWJ

17 Place of Last Entry
☒ U.S. Port of entry (City and State): Miami, Fla
☐ Border - Not through port (State) _____

18 List all Social Security Numbers used.
(1) NONE (3)
(2) (4)

19 Mother's Name (Maiden) (Last) (First) ☐ Living
NOEL Chabilia ☒ Deceased (year) 19[illegible]

20 Father's Name (Last) (First) ☒ Living
Philippe Ciseron ☐ Deceased (year) _____

PLAINTIFF'S EXHIBIT 54

Form I-700 (Rev. 05/87)Y Page 1

BEST AVAILABLE COPY

Name of Organization	Location	From (Month/Year)	To (Month/Year)
	NONE		

22 Fieldwork in perishable commodities from May 1, 1983 through May 1, 1986 (List most recent first)
Information concerning employment in the United States is subject to corroboration by the employer

Name of Employer	Farm Name and Location	From (Month/Year)	To (Month/Year)	Days Worked	Type of Field Work	Type of Crop	Documentation
L. CHAVEZ D. MARTINEZ	SOUTH, Dade County Dade, Fla	MAY 85	April 86	221	LABOR WORKER	Limes and Beans	LIC-1

23 List all periods of residence in the United States since May 1, 1983 and means of support. Begin with your present address (attach an additional sheet if necessary)

Street Name and Number (Apt. No.)	City	State and ZIP Code	Means of Support	From (Month/Year)	To (Month/Year)
163 N.W 57 ST	Miami	Fla 33127	7	04/85	Present

24 I ☐ have I ☑ have not received public cash assistance from any source, including, but not limited to, the United States Government, any state, county, city or municipality. (Check the first block if you or a dependent member of your immediate family has received such assistance, explain, including the name(s) of recipient(s) and Social Security number(s) used.)

25 I ☐ have I ☑ have not been treated for a mental disorder, drug addiction or alcoholism.

26 I ☐ have I ☑ have not been arrested, convicted or confined in a prison.

27 I ☐ have I ☑ have not been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency or similar action.

65

Applicants for temporary resident status must establish that they are not excludable from the United States under the following provisions of section 212 of the INA. An applicant who is excludable under a provision of section 212 which may not be waived is ineligible for temporary resident status. An applicant who is excludable under a provision of section 212 (a) which may be waived may, if otherwise eligible, be granted temporary resident status if an application for waiver on Form I-690 is filed and approved.

A. Grounds of exclusion which may not be waived

- Listed by paragraph number of section 212 (a).
  - (9) Aliens who have committed or who have been convicted of a crime involving moral turpitude (does not include traffic violations)
  - (10) Aliens who have been convicted of two or more offenses for which the aggregate sentences to confinement actually imposed were five years or more
  - (12) Aliens who have been convicted of a violation of any law or regulation relating to narcotic drugs or marihuana, or who have been illicit traffickers in narcotic drugs or marihuana
  - (27) Aliens who seek to engage in activities prejudicial to the national interests or endangering the welfare, safety or security of the United States
  - (28) Aliens who are or at any time have been anarchists, or members of or affiliated with any Communist or other totalitarian party, including any subdivision or affiliate thereof
  - (29) Aliens who have advocated or taught, either by personal utterance or by means of any written matter, the doctrine of world communism, or the establishment of a totalitarian dictatorship in the United States
  - (33) Aliens who, during the period beginning on March 23, 1933, and ending on May 8, 1945, were under the direction of, or in association with:
    1) The Nazi government in Germany,
    2) Any government in any area occupied by the military forces of the Nazi government in Germany,
    3) Any government established with the assistance or cooperation of the Nazi government of Germany, or
    4) Any government which was an ally of the Nazi government of Germany

    ordered, aided, assisted or otherwise participated in the persecution of any person because of race, religion, national origin or political opinion
- Per regs of 212 (e).

  Aliens who at any time were exchange visitors subject to the two year foreign residence requirement unless the requirement has been satisfied or waived pursuant to the provisions of section 212 (e) of the Act

Do any of the above provisions apply to you?
[ ] No [ ] Yes (If "Yes" explain on a separate sheet of paper)

B. Grounds of exclusion which may be waived in the humanitarian interest to assure family unity or when it is in the public interest

- Listed by paragraph number of section 212 (a)
  - (1) Aliens who are mentally retarded
  - (2) Aliens who are insane
  - (3) Aliens who have suffered one or more attacks of insanity
  - (4) Aliens who are afflicted with psychopathic personality, sexual deviation, or a mental defect
  - (5) Aliens who are narcotic drug addicts or chronic alcoholics
  - (6) Aliens who are afflicted with any dangerous contagious disease
  - (7) Aliens who have a physical defect, disease or disability affecting their ability to earn a living
  - (8) Aliens who are paupers, professional beggars or vagrants
  - (11) Aliens who are polygamists or advocate polygamy
  - (12) Aliens who are prostitutes or former prostitutes, or who have procured or attempted to procure or to import prostitutes or persons for the purpose of prostitution or for any other immoral purpose, or aliens coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution
  - (13) Aliens coming to the United States to engage in any unnatural sexual act
  - (16) Aliens who have been excluded from admission and deported and who again seek admission within one year from the date of their deportation
  - (17) Aliens who have been excluded and deported and who thereafter the United States within five years from the date of deportation
  - (19) Aliens who have procured or have attempted to procure a visa or other documentation by fraud, or by willfully misrepresenting a material fact
  - (22) Aliens who have applied for exemption or deferment from training or service in the Armed Forces of the United States on the ground of alienage and who have been relieved or discharged from such training or service
  - (31) Aliens who at any time shall have, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law

Do any of the above provisions apply to you?
[ ] No [ ] Yes (If "Yes" explain on a separate sheet of paper)

29 If your native alphabet is in other than Roman letters, write your name in your native alphabet.

Marie-France Jean Philibbe.

30 Language of native alphabet

Créole

31 Signature of Applicant - I CERTIFY, under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I hereby consent and authorize the Service to verify the information provided, and to conduct police, welfare and other record checks pertinent to this application.

x Marie-France Jean Philippe

32 Date (Month/Day/Year)

10/24/87

33 Signature of person preparing form, if other than applicant. I DECLARE that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.

34 Date (Month/Day/Year)

10/24/87

35 Name and Address of person preparing form, if other than applicant (type or print)

Joseph Simon - 1131 N.W 6th St Miami Fla 33150

51 Occupation of person preparing form

Priest

QUALIFIED DESIGNATED ENTITY USE ONLY

37 Reviewed by (Print or Type Name)

38 Signature

39 Date

IMMIGRATION AND NATURALIZATION SERVICE USE ONLY

40 Recommendation: Temporary Residence

[ ] Approved [X] Denied

41 Recommendation: Waiver of Excludability under

Section 212 (a) _____ is [ ] Approved [ ] Denied

42 Class of Admission

T S-2.

43 Place of Adjustment

X LVIS

44 Date of Adjustment

45 Recommended by (Print or type Name and Title)

[redacted]

46 Signature

47 ID No.

48 Date

11/19/87

49 Final Action: Temporary Residence

[ ] Approved [ ] Denied

50 Director
Regional Processing Facility

51 ID No.

52 Date

OMB# 1115-0137

U.S. Department of Justice
Immigration and Naturalization Service

Affidavit Confirming Seasonal Agricultural Employment of an Applicant for Temporary Residence Status Under Section 210 of the Immigration & Nationality Act

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Please begin with item #1, after carefully reading the instructions.

A. INFORMATION ABOUT APPLICANT—To be completed by the applicant.

1. Name (Family Name in CAPITAL Letters) (First Name) (Middle Name)	2. Date of Birth (Month/Day/Year)
JEAN-PHILIPPE MARIE-FRANCE	09/22/53
3. Address (No. and Street) (Apt. No.) (City or Town) (State) (ZIP Code)	**4. Telephone Number (Include Area Code)**
163 N.W 57 ST MIAMI FLA 33127	NONE
5. Place of Birth (City or Town) (Country, Province or State) (Country)	**6. Country of Citizenship**
TERRE-NEUVE , BOIS NEUF HAITI	HAITI

B. INFORMATION ABOUT YOU, THE PERSON MAKING THE AFFIDAVIT.

7. Name (Family Name in CAPITAL Letters) (First Name) (Middle Name)	8. Telephone Number (Include Area Code)
CHARLES LECIUS --------	(305)576-8906

9. Address (No. and Street) (Apt. No.)	(City or Town)	(State)	(ZIP Code)
176 N.W 57 STREET	MIAMI	FLA	33127

10. Relationship to Applicant (Check which block(s) applies)

☐ Grower ☐ Foreman ☒ Farm Labor Contractor ☐ Union Official (Title) _____

☐ Other (explain) _____

C. FIELD WORK IN PERISHABLE COMMODITIES

11. Name of Farm SOUTH DADE GROVERS County DADE State FLA Phone No. 305) 248-7120	Name of Employer DAVID JOSE MARTINEZ	Dates Employed From MAY 85 APRIL 86

Man Days Worked	Type of Fieldwork	Type of Crop	Name Used By Applicant If Other Than Name In Block 1.	Social Security Number Used
	LABOR FIELD	LIES AND		
221	WORKER	BEANS PICKER	SAME	NONE

12. Name of Farm County State Phone No. ( )	Name of Employer	Dates Employed From To

Man Days Worked	Type of Fieldwork	Type of Crop	Name Used By Applicant If Other Than Name In Block 1.	Social Security Number Used
XX	XX	XX	XX	XX

13. Name of Farm County State Phone No. ( )	Name of Employer	Dates Employed From To

Man Days Worked	Type of Fieldwork	Type of Crop	Name Used By Applicant If Other Than Name In Block 1.	Social Security Number Used

Continued on other side.

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2 AGRICULTURAL EMPLOYMENT (Continued,

1 Identify the source of this information by checking the appropriate blocks below and state how you know the information to be true. Records kept by [ ] Grower, [ ] Union, [X] Farm Labor Contractor or [ ] Personal Knowledge Statement	15 Please sign and submit copies of the documents identified in item #14 or state the reason(s) for not supplying such documents. [X] Signed, supporting documentation is attached [ ] Supporting documentation is not attached (explain) Statement:

16 If the name of the applicant in block #1 is not the name under which the applicant worked as shown in Section C, please:
(a) attach a recognizable photograph of the applicant and sign your name in ink across the back of the photograph; or
(b) explain how you know that the applicant is, in fact, the person who performed the work.

I am willing to personally confirm this information, if requested. I declare and affirm under penalty of perjury that the information on this affidavit is true and correct to the best of my knowledge and belief.

Signature of Affiant

Signature of Applicant

Form I-705 (02-21-87)

Instructions for Form I-705
Affidavit of Seasonal Agricultural Employment

Preparation of Affidavit:
This affidavit is to be completed under oath by agricultural producers, their foremen, union officials, farm labor contractors, or other persons with specific knowledge of the employment history of a person seeking temporary residence status as a Special Agricultural Worker (SAW). A separate affidavit must be completed for each applicant and must be typewritten or printed legibly in ink. The affidavit must be completed in full. If extra space is needed to answer any item, attach a continuation sheet and indicate the item number. Affiants may provide other information not requested on this form which may help to establish the performance of qualifying employment by the applicant.

Eligibility Criteria for Special Agricultural Workers:
Section 210 of the Immigration and Nationality Act provides for the granting of temporary residence status to aliens who have performed field labor in perishable agricultural commodities in the United States for at least 90 man-days during the twelve month period ending May 1, 1986. Aliens who can also document performance of field work in perishable commodities for at least 90 man-days in the years ending May 1, 1984 and May 1, 1985 will be adjusted to permanent resident status one year earlier than those who cannot. A man-day is any day in which not less than one hour of the requisite labor is performed for one or more employers.

Confidentiality:
As required by section 210 of the Act, the information provided in this affidavit is confidential and may only be used by the Immigration and Naturalization Service in making a determination on the application for temporary resident status filed by a special agricultural worker. The information furnished shall not be made available to any other government agency.

4. **Work Performed Under an Assumed Name:**
(a). Instructions for Applicant:
In cases where you worked under an assumed name, you must prove that you are, in fact, the person who used that name. To do this, you should provide a recognizable photograph of yourself for identification by the affiant.
(b). Instructions for Affiant:
If you recognize the applicant from the photograph as the person who performed the work, sign the back of the photograph in ink and attach it to the affidavit.

5. **Penalties for False Statements:**
Whoever provides information in support of an application under section 210 of the Act and who knowingly and willfully conceals or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry or creates or supplies a false writing or document for use in making such application will be subject to criminal prosecution. Such false information is not protected by the confidentiality provisions of section 210 of the Act.

LIMES • TOMATOES • BEANS • PICKLES

LECIUS CHARLES

176 N.W. 57th STREET • MIAMI, FL 33127
(305) 693-6923

1. Name of Farmworker MARIE FRANCE JEAN PHILIPPE
   (whose picture is affixed to this document)
2. Social Security Number NONE
3. Name Farmworker used to work MARIE FRANCE JEAN PHILIPPE
4. Alien number of Farmworker (if he/she has one) NONE
5. Dates of Employment MAY 85 TO APRIL 86
6. Number of Hours Worked Per Day 6 TO 8 HOURS
7. Position LABOR FIELD WORKER
8. Duties Performed LIMES AND BEANS PICKER
9. Resident Address of Employer 176 N.W 57 ST MIAMI FLA 33127
10. Phone of Employer (305) 576-8906

I am willing to provide more information, if necessary. I also declare under penalty of perjury that the information provided is true and correct.

Attached hereto are the records evidencing his/her employment(if available)

Lecius Charles
Contractor's signature

Lecius Charles
~~Employer's signature~~

PHOTO

WITNESS MY HAND AND OFFICIAL SEAL
THIS THIRTY 1ST DAY OF OCTOBER 1987
STATE OF FLORIDA.
COUNTY OF DADE.

098923932

Applicant's Name Marie F. [illegible]	A - Number [illegible] - 923 - 932	Fee Receipt Number X105580 85 301(
Examiner's Name and I.D. Number [redacted]	L.O. X103	Date 11/13/87
Qualified Designated Entity I.D. No. 5 U.S.C. 552 (b)(6)	Attorney or Volag I.D. No.	

A. Check blocks for each type of supporting documents attached to application:

		SAW Employment Documentation
[ ] 1. Leases/Rent Receipts	[ ] 8. Utility/Phone Receipts	[ ] 15. Government Employment Records
[ ] 2. Employer/Union/ Business Records	[ ] 9. School Records	[X] 16. Grower Records
[ ] 3. Tax Records	[ ] 10. Bank/Check Records	[X] 17. Farm Labor Contractor Records
[ ] 4. U.S. licenses and I.D.'s	[ ] 11. Passports/Foreign I.D.'s	[ ] 18. Union Records
[ ] 5. Marriage Certificates	[ ] 12. Child's Birth Certificate(s)	[ ] 19. Pay Stubs/Work Receipts
[ ] 6. Church/ Baptismal Records	[ ] 13. Affidavits of Friend(s)/ Relative(s)	[ ] 20. Tax Records
[ ] 7. Postmarked Mail	[ ] 14. Other:	[X] 21. Affidavits of Growers, Foremen, Farm Labor Contractors, or Union Officials
		[ ] 22. Other: [illegible]

B. Examiner recommends application be: (Check appropriate block(s) below and note basis for recommendation(s) on reverse).

[ ] 1. Granted.
[X] 2. Denied. [illegible]
[X] 3. Denied at LO (Complete Section C or D)

[ ] 4. Fraud Suspected
[ ] 5. Verification Requested

Level of Suspicion (Check appropriate block below: #5 is highest level.)
[ ] 1. [ ] 2. [ ] 3. [ ] 4. [ ] 5.

C. Denied Statutorily because of the following:

[ ] 1. Documents do not establish: [ ] (a) Identity [ ] (b) Residence [ ] (c) Employment

[ ] 2. Inadmissible under Section 212 (a) ____________ of the Act.

[ ] 3. In Legal Status during eligibility period.

D. Denied - Positive Fraud Established:

[X] 1. Documentary (List fraudulent document(s) presented, by category described above.)

[ ] 2. False statements [illegible]

E. For Secondary Review Only:

Reviewer's Name	Date of Review
Reviewer's Signature	Reversal Warranted? [ ] Yes [ ] No

Reasons for Reversal (If applicable)

____

____

____

____

\\\\\ ________ /////

Form I-696 (01/17/87)

Supreme Court of the United States

No. 89-1332

GENE MCNARY, COMMISSIONER OF IMMIGRATION AND NATURALIZATION, ET AL., PETITIONERS

v.

HAITIAN REFUGEE CENTER, INC., ET AL.

ORDER ALLOWING CERTIORARI. Filed June 4, 1990.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit is granted.

June 4, 1990

U.S. GOVERNMENT PRINTING OFFICE: 1990—262-203/40001